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SUPREME COURT OF THE UNITED STATES.

No. 227.

JAMES TOBIN, PL'FF IN ERROR,

vs.

ROBERT WALKINSHAW, JAMES A. FORBES AND WILLIAM E. BARRON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

UNITED STATES OF AMERICA,
Northern District of California.

Before the judges of the circuit court of the United States for the districts of California, at the court-house in the city of San Francisco, on the 15th day of September, of July term, in the year of our Lord one thousand eight hundred and fifty-five.

Witness the Hon. M. Hall McAllister, Hon. Ogden Hoffman, judges of said court.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

Be it remembered, that at the July term, in the year of our Lord one thousand eight hundred and fifty-five, before the honorable judges of the circuit court of the United States for the districts of California, at the court-house in the city of San Francisco, came James Tobin, by E. L. Goold, esq., his attorney, and brought into said court, before the aforesaid judges thereof, his certain complaint against Robert Walkinshaw, John Young, Norman S. Bestor, James A. Forbes, William E. Barron, which said complaint follows in these words, that is to say:

Circuit Court of the United States for the districts of California, northern district.

JAMES TOBIN, Plaintiff,
vs.
ROBERT WALKINSHAW, JOHN YOUNG, Norman, S. Bestor, James A. Forbes, William E. Barron, Defendants.

James Tobin, who is a citizen of the State of California, and a resident of the city of San Francisco, complains of the above named Robert Walkinshaw, John Young, Norman S. Bestor, James A. Forbes and William E. Barron, who are aliens, subjects of the Kingdom of Great Britain, residents of the said district, for that heretofore, to wit, on the 12th day of September, 1855, in the county of Santa Clara, to wit, in the district aforesaid, said plaintiff was possessed of certain lands and tenements situated in said county of Santa Clara, in the district aforesaid, with the appurtenances, bounded and described as follows, viz: on the west by the lands formerly known as the rancho of Justo Larios, and separated therefrom by a conventional line commencing at a point at the foot of the "pueblo hills," north of and near to the angle formed by the junction of the Arroyo Seco and the Arroyo Alamitos; running thence south through said angle by the slope of the hill in the centre of the cañada to the foot of the Sierra Azul; on the south by the said Sierra; on the east by the Laurel hills; and on the north by

the low hills near the land of the pueblo of San José, the same being the lands known as the rancho of San Vicente, otherwise called the rancho of Berreyesa, which said premises the said plaintiff claims for the remainder of a term of years upon a demise of said lands and tenements made on the 12th day of July, 1850, for the full term of twenty years thence next ensuing, and which has not yet expired. And the said plaintiff being so possessed thereof for the remainder of the term aforesaid, said defendants afterwards, to wit, on the 13th day of September, 1855, at Santa Clara, to wit, in the district aforesaid, entered into the said premises and ejected the said plaintiff therefrom, and do unjustly withhold from the said plaintiff the possession thereof, to the damage of the said plaintiff in the sum of one million of dollars. Wherefore the plaintiff demands judgment against the said defendant, that he have restitution of the premises aforesaid, together with damages in said sum of one million of dollars, for the unlawful detention thereof, and for his costs in this behalf.

E. L. GOOLD, *Att'y for Pl'ff.*

V. E. HOWARD,
E. W. F. SLOAN,
Of Counsel.

Endorsed: Filed September 15th, A. D. 1855.
GEO. PEN JOHNSTON, *Clerk.*

UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the districts of California.

JAMES TOBIN, Plaintiff,
vs.
ROBERT WALKINSHAW et als., Defendants.

Action brought in the said circuit court and the complaint filed in the city of San Francisco, in the office of the clerk of said circuit court.

The President of the United States of America, to Robert Walkinshaw, John Young, Norman Bestor, James A. Forbes, William E. Barron, greeting:

You are hereby required to appear in an action brought against you by the above named plaintiff in the circuit court of the United States for the districts of California, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons) in the office of the clerk of said court in the city and county of San Francisco, within ten days (exclusive of Sundays and the day of service,) after the service on you of this summons, if served within this county, or if served out of this county, then within forty days, or judgment by default will be taken against you. The said action is brought to recover possession of certain

lands and tenements situated in the county of Santa Clara, State of California, the same being the lands known as the rancho of San Vicente, otherwise called the rancho of Berreyesa, (more particularly described in the complaint,) also one million of dollars damages for the unlawful and wrongful detention thereof by the defendants, and for costs of this action; and if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you, and each of you.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this fifteenth [L. S.] day of September, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth.

Attest: GEO. PEN JOHNSTON, *Clerk.*

OFFICE OF THE MARSHAL
Of the Northern District of California, ss.

I hereby certify that I received the within summons and copy of complaint on the 22d day of September, A. D. 1855, and personally served the same on the 22d day of September, A. D. 1855, upon William E. Barron, by delivering to James R. Bolton, who acknowledged to me that he is the duly authorized agent of the said Barron, a true copy of the same at his office, No. 92, Merchant street, in the of San Francisco, and by delivering to Robert Walkinshaw personally, in the city of San Francisco, on the 25th day of September, A. D. 1855, a copy of said summons attached to a certified copy of the complaint.

W. H. RICHARDSON,
U. S. Marshal.
By J. E. SERRILL, *Dep.*

I served a copy of the within summons, along with a proper copy of the complaint, personally upon James Alexander Forbes, in the town of Santa Clara, Santa Clara county, State of California, on the 25th day of Sept., A. D. 1855. (John Young not found.)

W. H. RICHARDSON,
U. S. Marshal.
By E. C. PALMER, *Deputy.*

Endorsed: Filed this 27th day of September, A. D. 1855.
GEO. PEN JOHNSTON, *Clerk.*

UNITED STATES OF AMERICA,
In the Circuit Court of the United States for the districts of California.

JAMES TOBIN, Plaintiff,
vs.
ROBERT WALKINSHAW et als., Defendants.

Action brought in the said circuit court, and the complaint filed in the city and county of San Francisco, in the office of the clerk of said court.

The President of the United States of America to Robert Walkinshaw, John Young, Norman S. Bestor, James A. Forbes, William E. Barron, greeting:

You are hereby required to appear in an action brought against you by the above named plaintiff in the circuit court of the United States for the districts of California, and to file your plea, answer, or demurrer to the complaint filed therein, (a copy of which accompanies this summons) in the office of the clerk of said court in the city and county of San Francisco, within ten days (exclusive of Sundays and the day of service) after the service on you of this summons, if served within this county, or if served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to recover possession of certain lands and tenements situated in the county of Santa Clara, State of California, the same being the lands known as the rancho of San Vicente, otherwise called the rancho of Berreyesa, (more particularly described in the complaint,) also one million of dollars damages for the unlawful and wrongful detention thereof by the defendants, and for costs of this action; and if you fail to appear and plead, answer or demur, as herein required, judgment by default will be entered against you, and each of you.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this twen-
[L. S.] sixth day of September, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth.

Attest: GEO. PEN JOHNSTON, *Clerk.*

OFFICE OF THE MARSHAL
Of the Northern District of California, ss.

I hereby authorize and deputise G. W. Bailey to serve this writ on Norman S. Bester, in Santa Clara Co.

Sept. 26th, 1855.

WM. H. RICHARDSON,
U. S. Marshal.
By W. M. SMITH, *Deputy.*

I hereby certify that I received the within summons on the second day of October, A. D. 1855, and personally served the same on the third day of October, A. D. 1855, on Norman S. Bester, by delivering to said defendant personally, in the county of Santa Clara, a copy of said summons, attached to a certified copy of the

complaint, dated Santa Clara county, this 3d day of October, A. D. 1855.

WM. H. RICHARDSON,
Marshal.

By G. W. BAILEY,
Special Deputy Marshal.

Endorsed: Filed this 5th day of October, A. D. 1855.
GEO. PEN JOHNSTON, *Clerk.*

Circuit Court of the United States for the districts of California.

ROBERT WALKINSHAW, JAMES A. FORBES, William E. Barron, John Young and Norman S. Bestor, Def'ts, ads. JAMES TOBIN, Pl'ff.

And the defendants, Robert Walkinshaw, James A. Forbes and Norman Bester, in their own proper persons, come and say, that this court ought not to have or take any further cognizance of the action aforesaid, because they say that the plaintiff, James Tobin, is a citizen of the United States, and a citizen of the State of California, residing in the city of San Francisco, as alleged in his complaint, and was such at the commencement of this action, and long previous thereto, and that the said defendants, Walkinshaw and Barron, are aliens, subjects of the kingdom of Great Britain, and have so been continuously from the respective days of their nativity to the present day, and that the other said defendants, Young and Bestor, and Forbes, are citizens of the United States, and citizens of the State of California, residing in the county of Santa Clara in said State, and were citizens of the United States, and of the State of California, residing in the said county of Santa Clara at the time of the commencement of this action, and for a long time previous thereto, and this the said defendants are ready to verify.

Wherefore they pray judgment whether this court can or will take further cognizance of the action aforesaid.

2 Nov'r, 1855.

HALLECK, PEACHY & BILLINGS,
Att'ys for Defendants.

In the Circuit Court of the United States for the districts of California.

NORTHERN DISTRICT OF CALIFORNIA.

ROBERT WALKINSHAW, JAMES A. FORBES, William E. Barron, John Young and Norman Bester, Def'ts, ads. JAMES TOBIN, Pl'ff.

The defendants, R. Walkinshaw, James A. Forbes and Norman Bester, being duly sworn, each deposes and says, that he has read the foregoing plea in abatement, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true. And each of said affiants further deposes and saith, that the said plea hereunto annexed is true in substance and matter of fact.

ROBERT WALKINSHAW,
JAMES A. FORBES,
NORMAN S. BESTER.

Subscribed and sworn to, this 2d day of November, A. D. 1855, before me.

GEO. PEN JOHNSTON, *Clerk.*

Endorsed: Filed Nov. 2d, 1855.

GEO. PEN JOHNSTON, *Clerk.*

Circuit Court of the United States for the districts of California.

JAMES TOBIN
vs.
ROBERT WALKINSHAW et als.

On the application of the plaintiff in this cause, by his attorney, E. L. Goold, it is ordered, that the time to plead on the part of the plaintiff to the defendants' plea to the jurisdiction of the court be extended for five days from this date.

10th November, 1855.

M. HALL McALLISTER,
Judge Cr. Court U. S., Districts Cal'a.

Endorsed: Filed November 10th, 1855.

GEO. PEN JOHNSTON, *Clerk.*

In the United States Circuit Court for the districts of California, northern district.

JAMES TOBIN
vs.
ROBERT WALKINSHAW, WILLIAM E. BARRON, JOHN YOUNG, NORMAN S. BESTER.

And the said plaintiff saith that notwithstanding anything by the said plea alleged, this court ought not to be precluded from taking cognizance of the action aforesaid, because he says that the said defendant, James Alexander Forbes, is not, and at the time of the commencement of the said action was not, a citizen of the United States of America, nor of the State of California, but that he is now, and at the time of the commencement of the said action was an alien, subject of the kingdom of Great Britain, and this the said plaintiff is ready to verify.

Wherefore he prays judgment, and that the said defendants,

Robert Walkinshaw, William E. Barron, and James Alexander Forbes, may answer the said plaintiff's complaint.

E. L. GOOLD, *Pl'ff's Att'y.*

Endorsed: Filed November 26, A. D. 1855.

GEO. PEN JOHNSTON, *Clerk.*

JAMES TOBIN
vs.
ROBERT WALKINSHAW et als.

On motion of E. L. Goold, esq., att'y for pl'ff, it is ordered that the pl'ff be allowed to strike out, as defendants in the complaint and summons herein, the names of John Young and Norman S. Bestor, and against them to discontinue his said action.

Endorsed: Filed Nov'r 26th, A. D. 1855.

GEO. PEN JOHNSTON, *Clerk.*

In the United States Circuit Court for the districts of California, northern district.

JAMES TOBIN
vs.
ROBERT WALKINSHAW, WILLIAM E. BARRON, JOHN YOUNG, NORMAN S. BESTOR.

This day appeared the plaintiff, by his attorney, E. L. Goold, and by leave of the court first had and obtained, strikes out as defendants in the complaint and summons herein, the names of John Young and Norman S. Bestor, and as against them the said Young and Bestor he discontinues his said action.

Endorsed: Filed November 26, A. D. 1855.

GEO. PEN JOHNSTON, *Clerk.*

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } C. L.—Ejectment.

On motion of E. L. Goold, esq., att'y for the plaintiff, it is ordered that the re-argument of the "plea to the jurisdiction," filed in this cause, heretofore set for this day, be postponed until to-morrow, at 1 o'clock p. m.

Endorsed: Filed Dec'r 17th, A. D. 1855.

GEO. PEN JOHNSTON, *Clerk.*

JAMES TOBIN
vs.
ROBERT WALKINSHAW et als. } Common Law.

The court ordered that the re-argument of the "plea to the jurisdiction," filed in this cause, heretofore set for to-day, be postponed until Friday, the 21st day of December, A. D. 1855.

Endorsed: Filed 18th day of December, A. D. 1855.

GEO. PEN JOHNSTON, *Clerk.*

Present, Hon. M. Hall McAllister, judge of said court; Ogden Hoffman, U. S. district judge.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et al. } Common Law.

And at this day come the parties to this cause by their respective attorneys, and the jurors heretofore summoned upon the venire heretofore issued herein; by agreement of the counsel for the respective parties, it is ordered by the court that the cause be heard without a jury, and that the following stipulation be filed in the clerk's office of this court, and entered on the minutes as follows, to wit:

United States Circuit Court for the districts of California, northern district.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Action for Ejectment.

The parties in this case hereby agree to waive a trial by jury, and that the two judges of this court shall try both issues of law and fact.

E. L. GOOLD, *Att'y for Plaintiff.*
HALLECK, PEACHY & BILLINGS,
Att'ys for Defendants.

Also, by consent of att'ys for the respective parties, it is ordered that the jury be discharged. Cause continued by the court until Saturday, the 25th day of October, A. D. 1856.

Endorsed: Filed October 23, A. D. 1856.
GEO. PEN JOHNSTON, *Clerk.*
WILLIAM STONE BOTTS, *Deputy Clerk.*

JAMES TOBIN
vs.
ROB'T WALKINSHAW et al. } Common Law.

And now, at this day come the parties to this cause, by their respective attorneys, and the cause was proceeded with. Juan B. Alvarado and ——— Hopkins were sworn as witnesses for the plaintiff. There not being time to conclude the hearing, the same was postponed until Monday, the 27th day of October, A. D. 1856.

And afterwards, to wit, on the 27th day of October, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, judge of said court; Hon. Ogden Hoffman, U. S. district judge.

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JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from Saturday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Francisco Arce, Antonio Señol, and Justo Larios were sworn as witnesses for the plaintiff. J. P. Brody was sworn as interpreter. There not being time to conclude the hearing, the same was postponed until to-morrow, October 28th, A. D. 1856.

And afterwards, to wit, on the 28th day of October, A. D. one thousand eight hundred and fifty-six, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, judge of said court; Hon. Ogden Hoffman, U. S. district judge.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. J. Elizande was sworn as interpreter, and the examination of Justo Larios was resumed. There not being time to conclude the hearing, the same was postponed until to-morrow, October 29th, A. D. 1856.

And afterwards, to wit, on the 29th day of October, A. D. 1856, of the aforesaid term of said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, judge of said court; Hon. Ogden Hoffman, U. S. district judge.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Cecilia Castro, wife Justo Larios, Wm. C. Walker and Bedney F. McDonald, were sworn as witnesses for the plaintiffs. There not being time to conclude the hearing, the same was postponed until to-morrow, the 30th day of October, A. D. 1856.

And afterwards, to wit, on the 30th day of October, A. D. 1856, of the aforesaid term of said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. H. W. Halleck and F. A. Sawyer were sworn as witnesses for the plaintiff. There not being time to conclude the hearing, the same was postponed until to-morrow, October 31st, A. D. 1856.

And afterwards, to wit, on the 31st day of October, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. C. B. Polhemus and Pedro Cheboya were sworn as witnesses for the plaintiff; and A. Suñol, Juan B. Alvarado, and Hopkins, S. O. Houghton, Francisco Ferrer, Eusebia Galindo, Robert Burney, were sworn as witnesses for defendants.

Court adjourned until to-morrow, Saturday, the 1st day of November, A. D. 1856, at 9 o'clock a. m.

And afterwards, to wit, on the 1st day of November, A. D. 1856, of the aforesaid term of said court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Antonio Maria Pico was sworn as a witness for the defendants.

There not being time to conclude the hearing, the same was postponed until Thursday, the 6th day of November, A. D. 1856.

And afterwards, to wit, on the 6th day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, come the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from November 1st, 1856.

And now, at this day, come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Domingo Danglada, John P. Brodie, Francisco De Leon and Francisco Palacio, were sworn as witnesses for the defendants. There not being time to conclude the hearing, the same was postponed until to-morrow, the 7th day of November, A. D. 1856.

And afterwards, to wit, on the 7th day of November, A. D. 1856, of the aforesaid term of said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Antonio Maria Pico, a witness for the defendants, was examined, and there not being time to conclude the hearing, the same was postponed until to-morrow, the 8th day of November, A. D. 1856.

And afterwards, to wit, on the 8th day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties, by their respective attorneys, and further proceedings were had herein. On motion of

defendants' att'y, the evidence having established the fact that defendant, James Alexander Forbes, was not in possession of any portion of the premises, it is thereupon ordered, that judgment of acquittal be entered in favor of said James Alexander Forbes.

William Wiggins and Jacob R. Snyder were sworn as witnesses for the defendants. There not being time to conclude the hearing, the same was postponed until Monday, the 10th day of November, A. D. 1856.

And afterwards, to wit, on the 10th day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from Saturday last.

And now, at this day come the parties to this cause, by their respective attorneys, and J. Lewis and James M. Ford were sworn as witnesses for the def'ts. There not being time to conclude the hearing, the same was postponed until to-morrow, Nov. 11th, A. D. 1856.

And afterwards, to wit, on the 11th day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. The examination of Wm. J. Lewis, a witness for def'ts, continued. There not being time to conclude the hearing, the same was postponed until to-morrow, the 12th day of November, A. D. 1856.

And afterwards, to wit, on the 12th day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

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JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. The examination of Wm. J. Lewis, a witness for the defendants, resumed. There not being time to conclude the hearing, the same was postponed until Friday next, the 14th day of November, A. D. 1856.

And afterwards, to wit, on the 14th day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from Wednesday last.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Secondino Robles, José Fernandez and John Young were sworn as witnesses for the defendants. There not being time to conclude the hearing, the same was postponed until Monday, the 17th day of November, A. D. 1856.

And afterwards, to wit, on the 17th day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from Friday last.

And now, at this day, come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Sherman Day, James Hepburn, Isaac N. Thorne, Rob't Walkinshaw, and Wm. E. Barron were sworn as witnesses for the defendants. There not being time to conclude the hearing, the same was postponed until to-morrow, the 18th day of Nov'r, A. D. 1856.

And afterwards, to wit, on the 18th day of Nov'r, A. D. 1856, of the aforesaid term of the circuit court, to which day

the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and Kellogg, Dr. Wm. O. Ayers, and John Clare were sworn as witnesses for the defendants. There not being time to conclude the hearing, the same was postponed until to-morrow, the 19th day of November, A. D. 1856.

And afterwards, to wit, on the 19th day of Nov'r, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Drury Melone and John Yontz were sworn as witnesses for the pl'ff. There not being time to conclude the hearing, the same was postponed until Friday, the 21st day of November, A. D. 1856.

And afterwards, to wit, on the 21st day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, come the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from Wednesday last.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Dr. Hans. H. Behr, Henry C. Melone, William McCutcham, Cha's Brown, Joseph Aram, Alexander Hatler, Wm. E. Lovett, and M. F. Game, were sworn as witnesses for the plaintiff. There

not being time to conclude the hearing, the same was postponed until to-morrow, Saturday, the 22d day of November, A. D. 1856.

And afterwards, to wit, on the 22d day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their attorneys, and further proceedings were had herein. José Raphael Gonzales, Dr. Henry Gibbons, John B. R. Cooper, and Manuel Castro, were sworn as witnesses for the plaintiffs.

On motion of the att'y for the plaintiff, and upon the authenticated statement that a subpœna was issued for and returned served upon Manuel Castro, who is now absent from the court, it is ordered that an attachment issue for said Manuel Castro, returnable forthwith.

Court adjourned until Monday, the 24th day of November, A. D. 1856, at 11 o'clock a. m.

And afterwards, to wit, on Monday, the 24th day of November, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from Saturday last.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. John F. Brodie, Wm. J. Lewis, and Dr. Wm. O. Ayers, were examined as witnesses for the defendants.

By consent of counsel for both parties, it is ordered that this cause be set for further hearing on Monday, the 8th day of December, A. D. 1856.

And afterwards, to wit, on Monday, the 8th day of December, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties

aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

And now, at this day, this cause, on motion, and by consent of parties, it having been heretofore set for to-day, it is ordered that further hearing of the cause be postponed until Wednesday, Dec. 17th, 1856.

And afterwards, to wit, on the 17th day of December, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, come the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from Dec. 8th, 1856.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings are had herein. Fred'k A. Sawyer was sworn as a witness for the plaintiff. Cause opened and argument commenced for the plaintiff by E. L. Goold, esq. There not being time to conclude the hearing, the same was postponed until Friday next, Dec. 19th, A. D. 1856.

And afterwards, to wit, on the 19th day of Dec'r, A. D. 1856, of the aforesaid term of the said circuit court, to which day the aforesaid cause had been regularly continued, came the parties in said cause, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from Dec. 17th, 1856.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Argument continued by Treadwell, esq., on behalf of plaintiff. There not being time to conclude the hearing, the same was postponed until to-morrow, the 20th day of December, 1856.

And afterwards, to wit, on the 20th day of December, A. D. 1856, of the aforesaid term of the said circuit court, to which day

the said cause had been regularly continued, came the parties, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROB'T WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day, come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Argument continued by A. C. Peachy, esq., on behalf of defendants. There not being time to conclude the hearing, the same was postponed until Tuesday, the 23d day of December, A. D. 1856.

And afterwards, to wit, on the 23d day of December, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause was regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROBT. WALKINSHAW et als. } Common Law.

Cause continued from Saturday, December 20th, 1856.

And now at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Argument continued by A. C. Peachy on behalf of the defendants. There not being time to conclude the hearing, the same was postponed until to-morrow, Wednesday, the 24th day of December, A. D. 1856.

And afterwards, to wit, on the 24th day of December, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause was regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROBT. WALKINSHAW et als. } Common Law.

And now, this day, this cause being continued from yesterday, come the parties hereto, by their respective attorneys, and further proceedings were had herein. Argument continued by J. P. Hoge, esq., on behalf the defendants. There not being time to conclude the hearing, the same was postponed until Friday, the 26th day of December, A. D. 1856.

And afterwards, to wit, on the 26th day of Dec., A. D. 1856, of the aforesaid term of the said circuit court, to which day the said

cause had been regularly continued, came the parties in said cause, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROBT. WALKINSHAW et als. } Common Law.

Cause continued from Wednesday, the 24th day of December, 1856.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Argument continued by E. W. F. Sloan, esq., on behalf of plaintiff. There not being time to conclude the hearing, the same was postponed until to-morrow, Saturday, December 27th, A. D. 1856.

And afterwards, to wit, on the 27th day of December, A. D. 1856, of said term of the aforesaid circuit court, to which time the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROBT. WALKINSHAW et als. } Common Law.

Cause continued from yesterday.

And now, at this day come the parties to this cause, by their respective attorneys, and further proceedings were had herein. Argument continued by E. W. F. Sloan, esq., on behalf of the plaintiff. There not being time to conclude the hearing, the same was postponed until Monday next, the 29th day of December, A. D. 1856.

And afterwards, to wit, on the 29th day of December, A. D. 1856, of the aforesaid term of the said circuit court, to which day the said cause had been regularly continued, came the parties aforesaid, by their attorneys, and the following proceedings were had:

Present, Hon. M. Hall McAllister, Hon. Ogden Hoffman.

JAMES TOBIN
vs.
ROBT. WALKINSHAW et als. } Common Law.

Cause continued from Saturday.

And now, at this day come the parties to this suit, by their respective attorneys, and further proceedings were had herein. Argument concluded and case closed by E. W. F. Sloan on behalf of the plaintiff.

United States Circuit Court for the districts of California, northern district.

JAMES TOBIN
vs.
ROBERT WALKINSHAW, WILLIAM E. BARRON, JAMES A. FORBES. } September, 1857.

This action having been called in its order on the calendar, and a trial by jury having been waived by the parties in open court, and by a stipulation to that effect duly filed in the cause, and the case having been submitted to be tried by the court, as well on matters of fact as of law, after hearing the evidence presented, and after due deliberation thereon, the court finds that the said defendants are not guilty of the several trespasses and ejectment laid to their charge in manner and form as the said James Tobin hath complained against them.

April 13, 1857.

M. HALL McALLISTER, *Judge.*
OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Verdict filed April 13, 1857.
CUTLER McALLISTER, *D. C.*

UNITED STATES OF AMERICA,
State of California.

In the Circuit Court of the United States of America for the districts of California, in and for the northern district.

Judgment.

JAMES TOBIN
vs.
ROBERT WALKINSHAW, JAMES A. FORBES, and WILLIAM E. BARRON. } Common Law.

And now on this 13th day of April, A. D. 1857, came the parties aforesaid, by their respective attorneys, and the court having considered of the evidence, rendered the following verdict, to wit: "This action having been called in its order on the calendar, and a trial by jury having been waived by the parties in open court, and by a stipulation to that effect duly filed in the cause, and the case having been submitted to be tried by the court, as well on matters of fact as of law, after hearing the evidence presented, and after due deliberation thereon, the court find that the said defendants are not guilty of the several trespasses and ejectment laid to their charge in manner and form as the said James Tobin hath complained against them." Which being recorded in the minutes of said court, it was afterwards, to wit, on the 20th day of April, 1857, considered by the court, and judgment ordered to be entered accordingly, that the plaintiff, James Tobin, take nothing by his action aforesaid; and that the defendants, Robert Walkinshaw,

William E. Barron, and James A. Forbes, recover of the plaintiff their costs and disbursements in that behalf expended to be taxed.

San Francisco, Cal'a.

At a stated term of the circuit court of the United States for the districts of California, in and for the northern district thereof, held at the city of San Francisco, on Wednesday, April 15th, A. D. 1857; present, Hon. M. Hall McAllister.

JAMES TOBIN
v.
ROBT. WALKINSHAW et als. } Common Law.

This day come the parties to this suit, by their respective attorneys, and the plaintiff presented his bill of exceptions, which was signed, sealed, and ordered to be enrolled and made part of the record in this case.

Bill of Exceptions.

In the Circuit Court of the United States for the districts of California, in the northern district.

JAMES TOBIN, Trustee, &c.
vs.
ROBERT WALKINSHAW et als. } September Term.

Be it remembered that on the trial of this cause at the term aforesaid, the plaintiff, to sustain the issue on his part, introduced and read in evidence from the Mexican archives of Upper California, in the office of the surveyor general of the United States for said State, an original expediente, consisting of documents and marginal entries, which were proved to be genuine, copies whereof, with corresponding translations marked A, B, and C, are in the words and figures following, viz:

Exhibit A.

Documentary Evidence by Plaintiff.

From the archives of the office of the United States Surveyor General.

Jurisdicion del Pueblo S. José Guadalupe—Año de 1833.

José Berreyesa vecino del pueblo de San José Guadalupe solicita el terreno nombrado Chavoyas en la misma jurisdiccion.

119.

Sello Cuatro—Una Cuartilla.

Habilitado provicionalmente por la concisoria subalterna interina del puerto de Monterey de la Alta California para los años de mil ochocientos treinta y uno, y ochocientos treinta y dos.

J. J. GOMEZ.

SALVADOR ESPINOSA.

Sor. Y'tre Ayuntamiento:

El C. José Berreyesa, Sargto. Lo. de la Compa. de San Francisco, en la actualidad secretario de este Y'tre Ayuntamiento ante Ustedes se presenta deciendo; que hallandise con una numerosa familia, y que presiamte, tiene que ber para la debida y muy nesesaria subsiestencia de ella, en lo subsibo, y como hasta la fecha desde que me licencia (que hace mas de un año) no tengo todavia en la comunidad de este pueblo, ni un solar, pero no tampoco un pedaso de tierra propio; por lo que hago patente á Ustedes se dignen concederme el parage que antes tenian los Chaboyas, y que estos por ciertos motibos, y informes, que el alcalde de aguel tiempo Mariano Castro dio, al Sr. gefe politico, despueso dicho Sr. que lo perdicran, y ha que dado el espresado sitio baldio hasta la fecha. Con que tieniendo en consideracion Ustedes, y atendiendo à los meritos que me faversen, que es haver serbido á la nacion en la carrera militar 26 años con 4 meses mas, espero se me conseda la solicitud que hago à Ustedes dicho paraje, lo solicito, no solamente para cultibarlo y poner en la todo mi fuica, sino tambien bien para radicarme con mil familia; los bienes de Campo son 76 cabesas ganado mayor, 2 Yuntas de Bueyes, 23 Caballos mansos de mi hijos y en fin plantar en dicho paraje todo lo que algun dia les puedar ser util a mis hijos.

Por tanto, a Ustedes suplico se dignen ver propicia esta mi suplicatoria de les vibire eternamente reconosido.

Pueblo de San José, 18 de Sepe., de 1832.

JOSÉ BERREYESA.

PUEBLO DE SAN JOSÉ,
Mayo 5, *de* 1833.

No puedo acseder ha la solicitud de esta parte por que se be el decreto por mi antesesor dato el paraje a la dra parte que en el dia lo ocupa aunque a cido con fecha mas atrasada la solicitud.

PACHECO.

Exhibit B.

Sello Cuarto—Una Cuartilla.

Habilitado provicionalm'e por la comisaria subalterna del puerto de Monterey de la Alta California, para los años de mil ochocientos treinta y una y mil ochocientos treinta y dos.

J. J. GOMEZ.

SALVADOR ESPINOSA.

Señor Comandante General:

José Berreyesa, licenciado de la compañia de San Francisco, ante la muy notaria piedad de V. S. y recta justificacion se presenta, con respecto, y dice; que hallandos casado con Maria Sacarias Ver-

nal, y con once hijos de familia, unico producto con que salió del servicio militar despues de 26 años; y en el año 31, recibeé mi liciencia el dia 6 de Mayo, y pasé al pueblo San José, con algunos bienes du campo; y en el año ppdo., me presenté en debida forma al ayuntamiento de dicho pueblo en solicitud de un corto terreno que se hallaba baldio, y nadie lo mencionaba, nombrado anteriormente de los Chaboyas, y como mi solicitud fué hecha al ayuntamiento como dejo decho, tubo lugar la enbidia de hacer su oficio, por que uno de los dos regidores, Sebastian Peralta luego se me ante pusó diciendo que el tambien lo queria, y asi fueron mutiles todas mis instancias y suplicas con el alcalde Ygnacio Peralta ni diciendole que obrara en justicia, y recconosiera la mucha razon que á mi me abentajaba para ser preferido: y no haciendo ningun aprecio de mi reprensentacion se concluyo el año y entrego sin darme decreto ninguno. Por donde habiendo pedido al alcalde presente mi documento me lo debobbio encontrandole en al archibo traspapelado, y entonces supe como el alcalde anterior al fin le habia concedido el espresado parage al Regidor Peralta, y a mi me decia que hera hera nesesario rifarlo, y no heran sino pretestos de que se balia para entretenerme y decretarle al otro en su favor, sin atender a la razon sino unicamente a una ciega pacion con que procedio.

Por todo lo gual ocurro a V. S. luego haciendo segunda instancia sobre el mencinado parage ; primero por haberlo pedio antes que el Regidor Peralta, lo segunda lo tener el ningun ganado, ni mucho menos el numero que la ley previene, yo yo si lo tengo, lo tercero no tener el ningun hijo, y yo con cresida familia, y ultimamente no encontrase en el ningunos meritos por sus servicios sino que por enfermo lo licenciaron. Per tanto a V. S. rendidamente suplico se digne tener en consideracion dodo quanto dejo es puesto, y ber propicia esta mi suplicateria de que be vibire reconocido eternamente.

Rancho de Sta. Seresa, 21o de Junio, de 1833.

JOSÉ BERREYESA.

SANTA CLARA, *Octe.* 29, 1833.

Ynforme el alcalde del pueblo de San José sobre los puntos a que se constrae esta instancia.

FIGUEROA.

En complimento de superior decreto que antesede puesto la parte interesada y el contra quien se dise mi antesesor ante este ayuntamiento echos los cargos a este por que no tiene decretado la instantia sobre el paraje nombrado de los Chaboyas, contesto que directamente a sus manos no yego el documento y que solo lo bio sobre la mesa y preguntandose que escrito, esa aquel de su letra el dejo que era la solicitud de paraje citado por lo que resolbio que no le daba nada por que no tiene el numero de bienes que citaba

la ley solo es persuadio que aquel escrito era por la solicitud que berbal antes tiene la parte interresada, alego que por cuanto a la cortedad de bienes tampoco la agraciada no no los tubo aquel tiempo y ci es berdad le presento el documento mas no tiene testigos en la negatiba que se a se sobre la materia y que agregando esta parte como intersada mas le seco que aquella gracia no la y so con acuerdo de la corporacion lo que es probable por el lo Regidor de aquel tiempo Joaquin Higera la parte, que posa esta terreno en el dia no a metido los ganadas por estar empleado solo a echo sus ciambras en el y quelda suspenso de no meter en el cosa alguna, asta tanto su superior resolucion lo que sepone en el superior conocimiento y el cumplimto, de lo ordenado.

Pueblo de San José Guadalupe, 3 de Diciembre, de 1833.

SALVIÓ PACHECO.

LOMAS PACHECO,
Secretario.

Exhibit C.

MONTEREY, *Dece.* 17, *de* 1833.

En vista del antecedente informe y en atension a que el terreno solicitado por la parte de José Berreyesa, es perteneciente al comun y no a alguno particular, librese orden al alcalde del pueblo de San José Guadalupe, para que parage nombrado Chavoyas lo distrebuya por iguales partes entre José Berreyesa y Sebastain Peralta o que de comun lo disfruten entre ambos con prevencion de que si alguna de las partes no quedare conforme se le coloque en otro punto que le agarde y sea de la pertenencia del pueblo.

El S'r D. José Figueroa, gen'l de brigada com'te gen'l, ynsp'r y gefe, sup'r politico de la Alta California, asi lo mando decreto y firmo de que doy fé.

JOSÉ FIGUEROA.

AUGUSTIN V. ZAMARANO,
Secretario.

(*Translation of the foregoing espediente, number* 119.)

Exhibit A.

Jurisdiction of the pueblo of San José Guadalupe.

José Berreyesa, resident of San José Guadalupe, petitions for the land called Chavoyas, in the same jurisdiction.

119.

Fourth Stamp—One Quartilla.

Provisionally authorized by the subaltern commissariat ad interim of the port of Monterey, of Alta California, for the years 1831 and 1832.

SALVADOR ESPINOSA. J. J. GOMEZ.

To the Illustrious Ayuntamiento:

The citizen José Berreyesa, discharged sergeant of the company of San Francisco, now secretary of this illustrious ayuntamiento, before your excellencies presents himself, saying: that having a numerous family, and it being necessary for the undersigned to see to the proper and very necessary subsistence of it, and as, since the date of my discharge, (now more than a year,) I do not have yet in the community of this pueblo, either a house-lot, or even a peice of land as my own; wherefore, I petition your excellencies to condescend to grant to me the place which the Chayboyas formerly had, and which for certain motives, and the reports which the alcalde of that time, Mariano Castro, gave to the political chief, said Señor directed that they should lose it, and the said place has remained vacant until this date.

Your excellencies, taking which into consideration, and attending to the merits which favor me, which are, having served the nation in the military profession twenty-six years, and four months more, I hope that you will grant me the petition which I make to your excellencies. Said place I solicit, not only to cultivate it and to place in it all my property, but also to establish myself with my family. The property of the field are, 76 head of cattle, 2 yoke of oxen, 23 tame horses, belonging to my children; and in fine, to establish in said place all that which some day may be useful to my children. Wherefore, I pray your excellencies to look propitiously on this, my petition, for which I will live eternally grateful.

JOSÉ BERREYESA.

Pueblo de San José, 18th of September, 1832.

PUEBLO OF SAN JOSE, *May 5th*, 1833.

The petition of this party cannot be granted, because there appears the decree by my predecessor giving the place to another party, who now occupies it, although the petition has been of a latter date.

PACHECO.

Translation of Exhibit B.

Stamp Four—One Quartilla.

Provisionally authorized by the subaltern commissariat of the port of Monterey, of Alta California, for the years 1831 and 1832.

SALVADOR ESPINOSA. J. J. GOMEZ.

Señor Commandant General:

José Berreyesa, discharged sergeant of the company of San Francisco, before the well known piety and right justice of your excellency presents himself with respect, and says: that being married to Maria Sacarias Vernal, and having eleven children in family, the only product with which he has come out of the military ser-

vice after twenty-six years; and in the year thirty-one I received my discharge, the 6th of May, and removed to the pueblo of San José, with some stock, and last year I presented myself in due form to the ayuntamiento of said pueblo, in petition for a small (piece of) land which was vacant, and no one mentioning it, called formerly of the Chaboyas; and as my petition was made to the ayuntamiento, as I have said, envy took the place to do its office, for one of the two rejidores, Sebastian Peralta, immediately put himself before me, saying that he also wished it, and thus all my petitions and supplications were useless with the alcalde, Ygnacio Peralta, neither saying that he will act in justice, and recognise the strong reason which was in favor of my being preferred, and not having any appreciation of my representation, the year concluded and terminated without giving me any decree.

Wherefore, having asked of the present alcalde, he returned me my document, finding it in the archives mislaid among other papers, and then he knew that the anterior alcalde had conceded the said place to the regidor Peralta; and to me he said it was necessary to contest it, and they were only pretexts for the purpose of amusing me and decreeing it in favor of the other, without attending to reason, but only to a blind mode in which he proceeded.

Wherefore, I come to your excellency immediately, making a second petition about said place: first, for having asked for it before the regidor Peralta; second, that he has no cattle, or much less than the law requires, while I have; he has no child, and I have a large family; and lastly, there is not found in him any merit for his services, only that they discharged him on account of sickness.

Wherefore, I humbly petition your excellency to condescend to take into consideration all that I have represented, and to look propitiously on this my supplication, for which I will live eternally grateful.

JOSÉ BERREYESA.

Rancho de Santa Terresa, June 21st, 1833.

SANTA CLARA, *Oct. 29th*, 1833.

The alcalde of the pueblo of San José will report on the points found in this petition.

FIGUEROA.

In compliance with the superior decree which precedes, there being present the party interested, and the one against whom it is said my predecessor, before this ayuntamiento, made charges to it, because the proceeding about the place called of the Chaboyas was not decreed, he answered, that directly into his hands the document never came, and that he only saw it on the table, and asked what writing that was in his handwriting; he said that it was the petition for the said place, by which he determined not to give anything, because he did not have the number of stock which the law

required; only he was persuaded that that writing was for the petition which the party interested before made verbally. He alleged that, with respect to the small quantity of stock, neither did the favored party at that time; and it is true that he presented the document, but he had no witnesses in the negative which there is on the matter, and that adding this party as interested; but it turned out that that favor was not granted by concurrence of the corporation, which is probable, for the first regidor of that time, Joaquin Higera, the party who possessed that land then, had not put on the cattle, for he was only employed to make his sowings in it, and it was in suspense to not put anything in it until your superior resolution, which is placed in your superior knowledge, and in compliance with what is ordered.

SALVIO PACHECO.
TOMAS PACHECO,
Secretary.

Translation of Exhibit C.

MONTEREY, *December* 17*th*, 1833.

In view of the preceding report, and in attention that the land solicited by the party of José Berreyesa pertains to the community, and not to any private person, issue the order to the alcalde of the pueblo de San José Guadalupe, that the place called Chaboyas be divided into equal parts between José Berreyesa and Sebastian Peralta, or that in common they may enjoy it between them both, with the provision that if either of the parties does not remain satisfied, he may locate himself in another point which pleases him, and may be of the pertenencia of the pueblo.

Señor Don José Figueroa, of brigade, commandant general, inspector and superior political chief of Upper California, thus ordered, decreed, and which I certify.

JOSÉ FIGUEROA.

AUGUSTIN V. ZAMORANO, *Secretary.*

The plaintiff also introduced and read in evidence from said archives another expediente, consisting of original documents, which were proved to be genuine, with the accompanying sketch or diseño; true copies whereof (with corresponding translations of the writings) marked D, E, F, G, H, I, J, K, L, M and N, are as follows, viz:

Expediente promovido por el ciudadano José Reyes Berreyesa en solicitud del paraje nombrado la Cañada de los Capitancillos.

293.

Exhibit D.

EXMO. S'R: El ciud'o José R. Berreyesa, vecino del pueblo de S. José Guadalupe; ante V. E. como mas haya legar, y el derecho le

permite, se presente dice: que y a hace el dilatado tiempo, de mas de ocho años, que se haya radicado en el parage nombrado S. vincente Cañada de los Capitancillos cuyo parage le fue concedido, officialmente, por el finado S'r G'ral Don José Figueroa en el que subcistido hasta la fecha con su muy numerosa familia; y aunque a pesar de haber hecho varias instancias, en solicitud de obtener el titulo correspondente, para asegurar su legitima propiedad, no ha podido hasta ahora lograr esta satisfacion: cuya demora ha ha dado lugar a que su colindante Justo Larios haya tumbada su casa, y plantadola, en el intermido, que los dividia que eran como costa de los leguas, poco mas ó menos, con detrimento del agua que le quito ganado, y lo auyento por esa parte; y aun sin embargo, de que no se debe conciderar este, con tanto derecho como se lo han segetido, varios seductores, enemigos del orden social; que como vieron que yo pretendia se partiera la diferencia del terreno, le aconsejaron puciera su casa, en la dicha mediacion, para de este modo, entorpecer del todo mis intenciones. Por que se hace tres ó cuatro años, que se haya substitudo por Leandro Galindo, ese no hiso mas de vender le la casa, y no el terreno, por que no se hayaba con derecho para ello; y sin embargo, el andra para vender el paraje, como ya lo va averificar; por donde se infiere, de que no lo necesita, ó no tiene mayor interes in el. Y a la res S'r Exmo., que al expresado mi colindante, ha usado de esta arbitrariedad (como el mismo me lo dijo) de poner su casa facultativamente en el intermedio, esta sea el lindero que nos divida si V. E. lo tiene a bien; por que el tiene a donde estenderse que es para fuera de la cañada, que a nadie pertenese; y yo no tengo absolutamente a donde alagarme. Mi solicitud ha sido siempre de dos sitios, y ahora hago lo mismo: que es matadero, con dodas las lomas que pertenecen a la dicha cañada, los derechos que en esta parte me pueden favorcer son 26 años 74, meses mas que servia la patria, en la carrera militar; desta soldado hasta sargento en que use de mi licencia absoluta sin nota ninguna, como consta por ella. Y despues de haber sacrificado toda mi vida sali al fin sin pagmento ninguno perdidos mis averes, y solamente con once hijos de familia, que se hayan actualmente en mi compania y a mi sombra, y de estos casados cuatro de ellos; y tengo el honor de acompañar a V. E. al deseño respectivo.

Por tanta a V. E. rendidamente suplico, se digne tener en concidéracion todo cuanto dejo espuesto, y ver propicio esta mi suplicatoria de que le vivire reconocido.

JOSÉ R. BERREYESA.

Rancho de S. Vicente, 2 de Junio de 1842.

Exhibit E.

MONTEREY, *Junio 6 de* 1842.

Informe el juez de paz del pueblo de San José.

ALVARADO.

Exhibit F.

En virtud de la orden que S. E. se habia ordenar me à que se presentaron en esta jusgado di mi cargo, los C. C. José Reyes Berreyesa y Justo Larios, presentando los documentos que acreditan las solicitudes ó propriedad, sobre el terreno llamado Cañada de Capitancillos; al efecto, el primer presento el expediente que antecede, exponiendo tener dos representaciones mas en la prefectura del distrito; el segunda fue llamado y no se presento; mas si adquieré por Don Dolores Pacheco antecesor mio, que Larios habia presentado un expediente en el año 40, y se halla en dicha prefectura. Se he dicho antes que Larios no se habia presentado; y al tiempo de escribir las ultimas lineas se presentó, y dijo la misma razon dada por Don Dolores Pacheco.

El Sargento Reyes Berreyesa dijo, era conforme con la superior disposicion que V. E. tubiera à bien disponer.

ANTONIO BUELNA.

Pueblo de San José, Junio 11, de 1842.

Exhibit G.

MONTEREY, *Junio* 13, *de* 1842.

Informe la prefectura con presencia de los documentos ó solicitudes à que se refiere el informe del juez de paz del pueblo de San José.

ALVARADO.

Exhibit H.

Excellentismo S. Gobernador de esta Departmento:

Con el mayor ciudado se ha solicitado en el archivo de esta oficina el espediente de que hace mencion en su informe el S. juez de paz de San José, preteneciente á Don Justo Larios y no existe: aunque si, el que promovio el C. José R. Berreyesa, y en vista de estos documentos del informe del citado juez, y de la honoradez, numerosa familia, y buenos servicios del S. Berrelleza la prefectura di mi cargo opina que pueda concedersele le terreno que pretende y constar en el adjunto diseño, serviendo de la limites la casa de Justo Larios; mas sin embargo, V. E. resolvera lo que estime mas en justicia. Protesta à V. E. las seguridades de mi respecto.

Monterey, Junio 14, de 1842.

JOSÉ R. ESTRADA.

Exhibit I.

MONTEREY, *Junio* 15, *de* 1842.

Corras traslado à la parte de Justo Larios, para que alegue cuanto crea conveniente à sus derechos justificando al mismo tiempo conforme à la ley los meritos y servicios echos à la patria.

ALVARADO.

Exhibit J.

MONTEREY, *Augusto* 1o, *de* 1842.

Haciendo convenido la porte de Larios y de Berreyesa estar conforme con los linderos demarcados en el diseño, adjunto y en virtud de estar ocupando y cultivando el terreno este por algun tiempo, espida le el titulo correspondiente.

ALVARADO.

Exhibit K.

MONTEREY, 20 *de Augusto, de* 1842.

Vista la peticion con que da principio este expediente los informes que preceden, con todo lo demas que se tubo presente y ver conveno declaro, en conformidad à las leyes respectivas, dueno en propiedad al ciudadano José R. Berreyesa, de una parte del pàragé nombrado Cañada de los Capitancillos, colindante al norte con las lomerias bajas inmediatas al plan del pueblo de San José, al sur con la sierra, al oriente con las lomerias del Laurel, y al poniente con el rancho del ciudadano del Justo Larios, el cual tiene por lindero el alguno que forma el arroyo Seco y el de los Alamitos, la falda de la loma cituda en el sentro de la cañada, y la sierra.

Librese el correspondiente despacho, tome se razon en el libro respectivo, y dirijese este expediente á la ex'ma junta departmental para su aprobacion.

El Sr. Don Juan B. Alvarado, gobernador constitucional de las Californias, asi lo probeyó, mandó y firmó.

Exhibit L.

EX'MO SEÑOR: Los litigantes, C. C. José Berreyesa y Justo Larios han convenido ante ani en que los linderos de ambos al rumbo del E., segun demuestra el diseño de Berreyesa, sea tirando una recta desde el angulo que forma el arroyo de los Alamitos, con el Seco, rumbo al S., la falda de la loma situada en el centro de la cañada, hacia el E. y hasta llegar a al sierra; de manera que segun el espresado diseño, que parece mas escato, la repetida linea viene á ser una paralela que yo he demarcado con puntos para el conocimiento de V. E.

Con lo que han que dado aquietados y conformes.

JOSÉ Y. FERNANDEZ.

Monterey, 16 de Junio, de 1842.

Exhibit M.

Juan B. Alvarado, Gobernador Constitucional del Departmento de las Californias.

Por cuanto el ciudadano José Reyes Berreyesa, ha pertendido para su beneficio personal y de su familia una parte del paraje, nombrado Cañada de los Capitancillos; colindante al norte con los lomerias bajas, immediato al plan del pueblo de San José; al sur

con la sierra, con las lomerias del Laurel; y al poniente, con el rancho del ciudadano Justo Larios, el cual tiene por lindero el angulo que forma el arroyo Seco y el de los Alamitos rumbo al sur, la falda de la loma cituada en el sentro de la cañada asi al este hasta llegar à la sierra: practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes, usando de las facultades que me son conferidas à nombre de la nacion Mejicana, he venida en conceder el terreno mencionado declarandole la propiedad de el por los presentes letras sugeto à la aprobacion de la exm'a junta departmental, y a las condiciones siguientes:

1a. Podra secarlo sin prejudicar las travesias, caminos y servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estara habitada.

2a. Solicitara del juez respectivo que le de posecion juridica en virtud de esta despacho, por el cual se demarcaran los linderos en cuyos limites pondra amas de las mojoneras algunos arboles frutales ó silvestres, de alguna utilidad.

3a. El terreno de que se hace mencion es de nu sitio ganado mayor, poco mas ó menos, segun esplica el diseño que corre en el espediente respectivo. El jues que diere la posesion lo hara medir conforme à ordenanza quedando el sobrante que resulte à la nacion para los usos que mas le convengan.

4a. Si contraviniere à estas condiciones, perdera su derecho al terreno y sera denunciable por otro.

En consequencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro à que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, a veinte de Agosto, de mil ochocientos cuarenta y dos.

[*For map marked Exhibit N, see original, page* 73.]

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Translation of Exhibit D.

Most excellent Señor citizen José R. Berreyesa, resident of the pueblo of San José Guadalupe, before your excellency in due and proper manner presents himself, and says: That it is now a long time, more than eight years, that he has been settled in the place called San Vicente Cañada de los Captancillos, which place was officially conceded to him by the late Señor General Don José Figueroa. In it he has subsisted till the present date with his very numerous family; and although he has made various petitions in solicitude to obtain the corresponding title, in order to secure his legitimate ownership, he has not been able to the present time to obtain that satisfaction, which delay has given an opportunity to

Lon

his colindante, Justo Larios, to tear down his house and establish it in the interval which divides them, which was about two leagues, a little more or less, with detriment to the water, which he took from the cattle, and frightened them away from that part; and although undoubtedly he ought not to be considered with as much right, as various intriguers, enemies of the social order, have coerced him to it, and as they saw that I might ask that the difference of land should be divided, they counselled him to place his house in the said vicinity in order in this mode to defeat all my intentions, because if it is three or four years that he has substituted himself for Leandro Galindo, the latter did not more than sell him the house, and not the lands, for he had no right to it; and undoubtedly he will go and sell the place, as he is already about to do so, whence it is inferred that he does not need it, and has no more interest in it.

And inasmuch, most excellent Señor, as my said neighbor has used his arbitrariness (as he himself has told me) of placing his house artfully in the interval, this may be the line which divides us, if your excellency please, for he has room to extend himself outside of the cañada, which belongs to nobody, and I absolutely have nowhere to extend myself.

My petition has always been for two leagues, and now I make it the same—that is to say, from the house of Justo Larios to the Matadero, with all the hills that pertain to *to* said cañada. The rights which in this part may entitle me to favor are 26 years and 4 months more, which I served the country in the military profession, from soldier to sergeant, in which I used my absolute discharge without any note, as is shown by it; and after having sacrificed all my life, I came out at last without any pay, my property lost, and only with eleven children in family, which are now in my company and under my protection. And I have the honor to send herewith to your excellency the respective sketch, wherefore I duly pray your excellency to be so good as to take into consideration all I have expressed, and look propitiously on my supplication, for which I will live grateful.

JOSÉ R. BERREYESA.

Rancho of San Vincinte, June 2, 1842.

Exhibit E.

MONTEREY, *June 6th*, 1842.

The justice of the peace of San José will report.

ALVARADO.

Translation of Exhibit F.

In virtue of the order which your excellency sees fit to direct to me, that citizen José Reyes Berreyesa and Justo Larios should present themselves in this court, under my charge, presenting the docu-

ments which prove their petitions or property about the land called Cañada de los Capitancillos, in effect the former presented the foregoing expediente, representing that there were two other representations in the prefectura of the district; the second was called, but has not appeared, but I learn from Don Dolores Pacheco, my predecessor, that Larios had presented an expediente in the year '40, and that it was in said prefectura. It is said before that Larios had not appeared, but at the time of writing these last lines he appeared, and gives the same reason given by Don Dolores Pacheco.

The Sergeant Reyes Berreyesa says he agrees to the superior disposition which your excellency may make.

ANTONIO BUELNA.

Pueblo of San José, June 11th, 1842.

Translation of Exhibit G.

MONTEREY, *June 13th*, 1842.

Let the prefectura report, having in view the documents or petitions referred to in the report of the justice of the peace of the pueblo of San José.

ALVARADO.

Translation of Exhibit H.

Most Excellent Señor Governor of this Department:

The expediente mentioned in the report of the señor justice of the peace of San José, as belonging to Don Justo Larios, has been searched for with the greatest care in the archives of this office, and it does not exist; but that moved by citizen José R. Berreyesa does; and in view of these documents, of the report of said justice, and of the honesty, numerous family, and good services of Señor Berreyesa, the prefectura is of the opinion that there may be granted him the land which he asks for, and is shown in the adjoining map, the house of Don Justo Larios serving as bounds; but no doubt your excellency will determine what may be thought just.

With assurances of my respects,

JOSÉ R. ESTRADA.

Monterey, June 14th, 1842.

Translation of Exhibit I.

MONTEREY, *June 15th*, 1842.

Let this be passed to the part of Justo Larios, that he may allege what he deems proper as to his rights, justifying at the same time, conformably to law, the merits and services rendered to the country.

ALVARADO.

Translation of Exhibit J.

MONTEREY, *August 1st*, 1842.

Having agreed, the party of Larios and Berreyesa, to be con-

tent with the boundaries marked on the sketch adjoined, and in virtue that the latter has been occupying and cultivating the land for some time, let the corresponding title issue.

ALVARADO.

Translation of Exhibit K.

MONTEREY, *August 20th*, 1842.

Having seen the petition with which this expediente begins, the reports which are presented, with all else presented and proper to be seen, I declare, in conformity with the respective laws, citizen José R. Berreyesa owner in property of a part of the place named Cañada de los Capitancillos, bounded on the north by the low hills next the plain of the pueblo of San José; on the south by the Sierra; on the east by the Laurel Hills; and on the west by the rancho of citizen Justo Larios; which has for boundary the angle which forms the Arroyo Seco, and that of Alamitos, the falda de la loma, situate in the centre of the cañada and the sierra. Let the corresponding despatch issue, take note of it in the respective book, and direct this expediente to the most excellent junta departmental for its approbation.

Señor Don Juan B. Alvarado, constitutional governor of the Californias, thus proved, ordered and signed.

Translation of Exhibit L.

Most Excellent Señor:

The litigants, citizens José Berreyesa and Justo Larios, have agreed before me that the boundaries of both in the direction of the E., as the sketch of Berreyesa shows, may be, drawing a right line from the angle which the Arroyo de los Alamitos forms with the Seco, direction towards the S., the falda of the loma situate in the centre of the cañada, towards the E., and until it reaches the sierra, in such a way that, according to the said sketch, which appears more exact, the said line comes to be a parallel, which I have marked with points for the knowledge of your excellency.

With which they have remained satisfied and content.

Monterey, 16th June, 1852.

JOSÉ Y. FERNANDEZ.

Translation of Exhibit M.

Juan B. Alvarado, Constitutional Governor of the Department of the Californias:

Whereas citizen José R. Berreyesa has asked, for his personal benefit and that of his family, a part of the place named Cañada de los Capitancillos, bounded on the north by the low hills next to the plain of the Pueblo de San José, on the south by the sierra, on the east by the hills of the Laurel, and on the west by the rancho

of citizen Justo Larios, which has for boundary the angle which forms the Arroyo Seco and that of the Alamitos, direction towards the south the falda de la loma, situate in the centre of the cañada towards the east, until it reaches to the sierra; previously taking the proceedings and examinations concerning it, as directed by the laws, using the powers which are conferred on me, in the name of the Mexican nation, I have conceded to him the said land, declaring to him the ownership of it by the present letters, subject to the approbation of the most excellent departmental junta, and to the following conditions:

1st. He may enclose it without prejudice to the crossings, *woods* and servitudes; enjoy it freely and exclusively, devoting it to the use or cultivation which best suits him; but within one year he shall build a house, and it shall be inhabited.

2d. He shall solicit the respective justice to give him the judicial possession in virtue of this despatch, by whom the boundaries shall be marked out, in whose limits he shall place, beside the landmarks, some fruit or forest trees of some utility.

3d. The land of which mention is made is one square league, a little more or less, as the sketch which runs in the respective expediente explains. The justice who may give the possession will have it measured conformably to ordinance, leaving the surplus which results to the nation for the uses which may suit it.

4th. If he contravene these conditions, he shall lose his right to the land, and it shall be denounceable by another.

In consequence, I order that this title, being held as firm and valid, note be taken of it in the book which corresponds, and it be delivered to the party interested for his security and other ends.

Given at Monterey the twentieth of August, one thousand eight hundred and forty-two.

The plaintiff then produced and read in evidence an original titulo or grant, which was proved to be genuine, and to have been issued to said Berreyesa at the time it bears date, a copy whereof and a translation of the same are in the words and figures following, viz:

Copy of Plaintiff's Title.

Sello Primero—Seis Pesos.

Habilitado provisionalmente por la aduana maritima de Monterey, para los años 1842 y 1843.

ANTONIO MA. OSIO.

ALVARADO.

{ Ad'a maritima } { de Monterey. }

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto el ciudadano José Reyes Berreyesa, ha pretendido

para su beneficio personal y el de su familia el terreno conocido con el nombre de Cañada de los Capitancillos, colindante al norte con las lomarias bajas, inmediatas al plan del Pueblo de San José, al sur con la Sierra, al oriente con las lomarias del Laurel, y el poniente con el rancho del ciudadano Justo Larios, el cual tiene por lindero el alguno que forma el Arroyo Seco y el de los Alamitos, rumbo al sur, la falda de la loma, situada al centro de la cañada, asi a el este, y hasta llegar á la Sierra; practicadas previamente las diligencias y aberiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las faculdades que me son conferidas á nombre de la nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las precentes letras, sugetandose á la aprobacion de la Exma. Junta Departmental y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las trabecias caminos y servidumbres, lo disfrutara libre y esclusivamente, destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricará casa y estara habitada.

2a. Solicitara del juez respectivo que se le de posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos en cuyos limites pondra amas de las mojoneras algunas arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de un sitio de ganado mayor segun esplica el diseño que corre en el espediente. El juez que diere la posesion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos convenientes.

4a. Si contraviniere a estas condiciones, perdera su derecho al terreno y sera denunciable por otro.

En consequencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguado y demas fines.

Dado en Monterey, a veinte de Agosto de mil ochocientos cuarenta dos.

JUAN B. ALVARADO.

MANUEL JIMENO, *Secretario.*

Queda tomada razon de este despacho en el libro de asientos sobre adjudicacion de terrenos baldios a foja 15.

JIMENO.

El Exmo. Señor gobernador ha dispuesto se tome razon de esta consesion en la prefectura del 1er distrito 15.

JIMENO.

Tomese razon.

ESTRADA.

Queda tomada razon de este superior titulo en el cuaderno respectivo de este oficina de mi cargo en el foja 8 frente.

Monterey, Septe. 22, de 1842.

JOSÉ MARIA CASTAÑARES,
Secretario Into.

Translation of the foregoing Titulo.

Stamp First—Six Dollars.

Provisionally authorized by the maritime custom-house of Monterey for the years 1842 and 1843.

ANTONIO MARIA OSIO.

ALVARADO.

{ Custom-house Stamp. }

John B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas citizen José Reyes Berreyesa has asked, for his personal benefit and that of his family, the land known by the name of "Cañada de los Capitancillos," bounded on the north by the low hills (lomarias bajas) next to the plain of the pueblo of San José, on the south by the sierra, on *on* the east by the Laurel hills, and on the west by the rancho of citizen Justo Larios, which has for a boundary the angle which forms the Arroyo Seco and that of the Alamitos, direction towards the south, the falda of the hill situate in the centre of the cañada, towards the east, until it reaches to the sierra; the proceedings and examinations concerning it being previously had, according as directed by the laws and regulations, using the powers which are conferred on me, in the name of the Mexican nation, I have conceded to him the said land, declaring to him the ownership of it by the present letters, it being subject to the approval of the most excellent departmental junta, and under the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes. He will enjoy it freely and exclusively, devoting it to the use or cultivation which best suits him, but within one year he shall build a house, and it shall be inhabited.

2d. He shall solicit the respective justice to give him the juridical possession in virtue of this despatch, by whom the boundaries shall be marked out, in the limits of which he shall place, besides the landmarks, some fruit or forest trees of some utility.

3d. The land of which donation is made is one square league, as the sketch which goes in the expediente explains. The justice who may give the possession will have it measured conformably to ordinance, leaving the surplus which results to the nation, for the convenient uses.

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4th. If he shall contravene these conditions, he shall lose his right to the land, and it shall be denounceable by another.

In consequence, I order that the present title being held as firm and valid, note be taken of it in the respective book, and it be delivered to the party interested, for his security and other ends.

Given at Monterey, the twentieth of August, one thousand eight hundred and forty-two.

JOHN B. ALVARADO.

MANUEL JIMENO, *Secretary.*

Note has been taken of this despatch in the book of entries of adjudications of vacant lands, at page 15.

JIMENO.

His excellency the governor has ordered that note be taken of this concession in the prefecture of the 1st district, 15.

JIMENO.

Let note of it be taken.

ESTRADA.

Note of this superior title is taken in the respective book of this office under my charge, at page 8, in front.

Monterey, September 22d, 1842.

JOSÉ MARIA CASTAÑARES,
Secretary ad interim.

It was proved that Figueroa, who signed the document marked C, dated the 17th December, 1833, was then governor of California; that under said order José Reyes Berreyesa, therein mentioned, entered into possession of the place called the Chaboyas, and that he continued there to reside with his family until his death in 1846; that it is the same place or a part of the same place which is in the second expediente and grant above mentioned, described as the Cañada de los Capitancillos, or rancho San Vicinte; that for some years previous to and at the time of the issuance of said grant by Governor Alvarado, and up to the time of his death, the said José Reyes Berreyesa resided on said land, or rancho, in a house near the arroyo Seco, and that he cultivated a field east of and at the junction of the arroyos Alamitos and Seco, as described on the diseño (marked N;) that he owned five or six hundred cattle, which grazed all over said rancho; that the claim to said rancho had been duly presented by the widow and heirs of said Berreyesa to the board of United States land commissioners for California, and by their decree had been confirmed to the extent of one square league; that the same was then pending on appeal in the district court of the United States for the northern district of said State; that said rancho is situated in the county of Santa Clara, in said district, as mentioned in the complaint; that for some years prior

to 1842, one Justo Larios occupied the adjoining tract of land on the west, lower down in the same cañada; that he had removed further up towards the junction of the arroyos Alamitos with the arroyo Seco, as represented on the Berreyesa diseño (N,) and had built and occupied a house about two hundred yards below that point. An expediente from said archives appertaining to said adjoining rancho of Justo Larios, consisting of a petition, diseño and other writings, all proved to be genuine, were read and put in evidence; also a grant or titulo signed and delivered by Alvarado, then governor as aforesaid, at the date therein mentioned. True copies of said expedientes and titulo are as follows, viz:

Espidiente promivido, por el ciudadano Justo Larios en solicitud del parage conocido con el nombre de Cañada de los Capitancillos.

[1842.]

[294.]

Sello Tercero—Dos Reales.

Habilitado provicionalmente por la adiuana martima del puerto de Monterey, en el departmento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIA OSIO.

ALVARADO.

[L. S.]

Rehabilitado por al misma, para el año de mil ochocientos cuarenta y dos.

ANTONIO MARIA OSIO.

ALVARADO.

Sor. Prefecto del 1er Distrito:

Justo Larios ante V. S. con el debido respeto dice: q'e habiendo comprado a Leandro Galindo una casa q'e tenia situada en el parage conocido con el nombre de la Cañada de los Capitancillos, me cedio el derecho q'e tiene al terreno, p'r concecion del Y. A. del P. de S. José Guadalupe como consta en el espediente q'e presente en el año de 1836 al E. S. gobernador, e iglam'te, en otro q'e presente el año de 40, al S'or D. José Maria Villa, encargado entonces de la prefectura de 1er districto y como ambos espedientes han sido p'r desgracia estraviados, suplico a V. S. se digne admitir este, y conceder me el terreno q'e solicito y hoy poseo desde eh

Mon—

año de 1836, declarandome la propiedad los limites de d'ho sitio,

Juan B. Alvarado, Gobernador Constitucional del Departmento de las Californias.

Por cuanto el c'no Justo Larios ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de los Capitancillos; colindante con la sierra, con el arroyo Seco p'r la parte del establecim'to de S'ta Clara, y con el rancho del ciudadano José R. Berreyesa el cual tiene por lindero el angulo que forma el arroyo Seco, y el de los Alamitos, rumbo al sur la falda de la loma cituado en el sentro de la cañada asi al este hasta llegar a la sierra practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuerto por leyes y reglamentos de la materia usando de las facultades que me son conferidas a nombre de la nacion Mejicana he benido en concederle el terreno mencionado declarandole la propiedad de el p'r las presentes letras sugetandose a la aprobacion de la ex'ma junta departmental y a las condiciones siguientes:

1a. Podra secarlo sin perjudicar las travesias caminos y serbidumbres lo disfrutara libre y escluavam'te destinandolo al uso ó cultivo que más le acomode pero dentro de mi año fabricara casa y estara habitada.

2a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra amas de las majoneras algunos arboles frutales ó cilivestres de alguna utilidar.

3a. El terreno de que se hace mencion es de un sitio de ganado mayor poco mas ó menos segun esplica el diseño que corre en el esped'te respectivo. El juez que diere la posecion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos que mas le combengan.

4a. Si contrabiniere a estas condiciones perdera su direcho al terreno y sera denunciable por otro.

En consecuencia mando q'e teniendose por firme y valedero este titulo se tome razon de el en el libro sobre adjudicaciones de terrenos valdios y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, a 1a de Ag'to, de 1842.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such, having in my office and in my charge and custody a portion of the acchives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine, inclusive, exhibit a true and accurate copy of a document entitled Espediente Promovido por el Ciudadano Justo

Larios en solicitud del parage conocido con el nombre de Cañada de los Capitancillos, 1842, 294, now on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this eighteenth day of September, 1856.

[L. S.]

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepeared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Espediente moved by citizen Justo Larios, asking for the place known by the name of Cañada de los Capitancillos.

1842.

No. 294.

Stamp Third—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1840 and 1841.

ANTONIO MARIA OSIO.

ALVARADO.

Re-authorized by the same for the year 1842.

ANTONIO MARIA OSIO.

ALVARADO.

{Stamp of Custom-house of Monterey.}

Señor Prefect of the 1st district:

Justo Larios, before your excellency, with due respect, says: Having purchased of Leandro Galnido a house which he had situate in the place known by the name of the Cañada de los Capitancillos, he ceded to me the right which he had to the land, by concession of the illustrious ayuntamiento of the pueblo of San José Guadalupe, as appears in the espediente which he presented in the year 1836 to the most excellent Señor governor; and also,

Juan B. Alvarado, Gobernador Constitucional del Departmento de las Californias.

Por cuanto el c'no Justo Larios ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de los Capitancillos; colindante con la sierra, con el arroyo Seco p'r la parte del establecim'to de S'ta Clara, y con el rancho del ciudadano José R. Berreyesa el cual tiene por lindero el angulo que forma el arroyo Seco, y el de los Alamitos, rumbo al sur la falda de la loma cituado en el sentro de la cañada asi al este hasta llegar a la sierra practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuerto por leyes y reglamentos de la materia usando de las facultades que me son conferidas a nombre de la nacion Mejicana he benido en concederle el terreno mencionado declarandole la propiedad de el p'r las presentes letras sugetandose a la aprobacion de la ex'ma junta departmental y a las condiciones siguientes:

1a. Podra secarlo sin perjudicar las travesias caminos y serbidumbres lo disfrutara libre y escluavam'te destinandolo al uso ó cultivo que más le acomode pero dentro de mi año fabricara casa y estara habitada.

2a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra amas de las majoneras algunos arboles frutales ó cilivestres de alguna utilidar.

3a. El terreno de que se hace mencion es de un sitio de ganado mayor poco mas ó menos segun esplica el diseño que corre en el esped'te respectivo. El juez que diere la posecion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos que mas le combengan.

4a. Si contrabiniere a estas condiciones perdera su direcho al terreno y sera denunciable por otro.

En consecuencia mando q'e teniendose por firme y valedero este titulo se tome razon de el en el libro sobre adjudicaciones de terrenos valdios y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, a 1a de Ag'to, de 1842.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such, having in my office and in my charge and custody a portion of the acchives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine, inclusive, exhibit a true and accurate copy of a document entitled Espediente Promovido por el Ciudadano Justo

Larios en solicitud del parage conocido con el nombre de Cañada de los Capitancillos, 1842, 294, now on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this eighteenth day of September, 1856.

[L. S.]

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepeared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Espediente moved by citizen Justo Larios, asking for the place known by the name of Cañada de los Capitancillos.

1842.

No. 294.

Stamp Third—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1840 and 1841.

ANTONIO MARIA OSIO.

ALVARADO.

Re-authorized by the same for the year 1842.

ANTONIO MARIA OSIO.

ALVARADO.

{Stamp of Custom-house of Monterey.}

Señor Prefect of the 1st district:

Justo Larios, before your excellency, with due respect, says: Having purchased of Leandro Galnido a house which he had situate in the place known by the name of the Cañada de los Capitancillos, he ceded to me the right which he had to the land, by concession of the illustrious ayuntamiento of the pueblo of San José Guadalupe, as appears in the espediente which he presented in the year 1836 to the most excellent Señor governor; and also,

in another, which he presented in the year '40, to Señor Don José Maria Villa, then charged with the prefectura of the 1st district; and as both espedientes have by accident been lost, I pray your excellency to deign to admit this, and to grant me the land which I ask and now possess since the year 1836, declaring to me the ownership. The limits of said place are from the boundaries of Santa Clara to the corral called of the deceased Marario.

Wherefore, I pray your excellency to deign to grant this, my petition, by which I shall receive grace and favor.

I send herewith to your excellency the sketch of the place which I ask for.

Monterey, June 15th, 1842.

THE PETITIONER.

MONTEREY, *June* 16*th*, 1842.

The boundaries being fixed by the prefect and justice of the peace of the place of the land which the party interested asks for, let the corresponding decree of concession be made out.

Stamp Third—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1840 and 1841.

ANTONIO MARIA OSIO.

ALVARADO.

Re-authorized by the same for the year 1842.

ANTONIO MARIA OSIO.

ALVARADO.

{ Stamp of the Custom-house of Monterey. }

MONTEREY, *June* 16*th*, 1842.

Having seen the petition with which this espediente begins, the agreement which took place between Justo Larios and José R. Berreyesa, in the presence of the prefect and justice of the peace of that place, with all else which was presented and proper to be seen, in conformity with the laws and regulations on the matter, I declare the said Justo Larios owner in property of a part of the land called Cañada de los Capitancillos, bounded by the sierra, by the arroyo Seco on the part of the establishment of Santa Clara, and by the rancho of citizen José Reyes Berreyesa, which has for boundary the angle which the arroyo Seco and that of the Alamitos, direction towards the south, the falda of the hill situate in the centre of the cañada towards the east and till it reaches the sierra. Let the corresponding despatch issue; take note of it in the respective book, and direct this espediente to the most excellent departmental junta for its approval.

Señor Don Juan B. Alvarado, constitutional governor of the department of the Californias, thus ordered, decreed, and signed, of which I certify.

[*Here follows copy of the diseno or sketch.*]

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas citizen Justo Larios has asked, for his personal benefit and that of his family, the land known by the name of the Capitancillos, bounded by the sierra, by the Arroyo Seco on the part of the establishment of Santa Clara, and by the rancho of citizen José R. Berreyesa, which has for boundary the angle which the Arroyo Seco and that of the Alamitos, direction towards the south, the falda of the hill situate in the centre of the cañada towards the east till it reaches the sierra. The proceedings and examinations concerning it being previously taken according as directed by the laws and regulations in the matter, using the power which is conferred on me, in the name of the Mexican nation, I have granted to him the said land, declaring to him the ownership of it by these present letters, subject to the approval of the most excellent departmental junta and to the following conditions:

1st. He may enclose it without prejudice to the crossings, roads and servitudes, will enjoy it freely and exclusively, devoting it to the use and cultivation which most suits him, but within one year he will build a house and it shall be inhabited.

2d. He will solicit the respective justice to give him the juridical possession in virtue of this despatch, by whom shall be marked out the boundaries, in the limits of which he shall place, besides the landmarks, some fruit or forest trees of some utility.

3d. The land of which mention is made is one sitio de ganado mayor, a little more or less, as the sketch which goes in the respective espediente explains. The justice who may give the possession will have it measured conformably to ordinance, leaving the surplus which results to the nation for the uses which may best suit it.

4th. If he shall contravene these conditions he will lose his right to the land, and it will be denounceable by another.

Therefore I order that this title being held as firm and valid, note be taken of it in the book on the adjudications of warrant lands, and it be delivered to the interested party for his security and other ends.

Given at Monterey, the 1st of August, 1842.

That the claim to said rancho of Justo Larios was presented to said board of commissioners for confirmation in due time, and was then pending on appeal in said district court.

Justo Larios, being sworn as a witness for the plaintiff, testified that he and Berreyesa were in Monterey, the capital of Upper California, for the purpose of getting their respective "titulos," when they came before José Z. Fernandez, an alcalde, for an adjustment of their dividing boundary line, after they had agreed that the line should be so located as to run across the valley from the junction of the arroyos Seco and Almitos above mentioned. That they went before José Z. Fernandez, and in his presence settled the dividing line between the tracts of land for which they showed respectively a title from the governor; and that thereon Fernandez marked the line so agreed upon, on Berreyesa's diseño, by dotting a line thereon, and reported the same to the governor; that within a few days after they had received their respective title papers and returned home, he and Berreyesa went upon the land and located said dividing line, by commencing at a tree on the side of the pueblo hills, north of and near to the junction of said arroyos or creeks, which they marked, and running thence through said junction across the cañada and the "Lomas Bajas" to the foot of the "Sierra Azul," as delineated on McDonald's map, hereinafter referred to as a part of this bill of exceptions; and that they marked 3 or 4 trees at different points along said line. The line we agreed on was not marked out like the dotted line; we agreed on a straight line more to the west than the dotted line; the line we ran crossed the Lomita hills about 200 varas, more or less, from the point where the Fernandez line would cross; we ran it so to make a straight line. He subsequently pointed out the line to B. F. McDonald, by whom the line was run. That they had afterwards mutually acquiesced in it as the true dividing line of their respective tracts of land; that they ran said line straight, leaving the eastern base of the hill situated in the centre of the cañada, denominated on the Berreyesa diseño "lomita," two hundred yards, more or less, to the east; that it actually passed through a slope or depression in said "lomita," towards the east, as indicated on McDonald's map. That he knew the mine in possession of defendants, now called "New Almaden;" he knew of it before Berreyesa first settled on the place, when it was called the "Chaboyas" mine; that it is situated on the rancho of Berreyesa, near the eastern end of the ridge called "Lomas Bajas," on the diseño (N); that he pointed out the line (and the marked trees) so located by him and Berreyesa to Bedney F. McDonald, the surveyor, when he was engaged in surveying the land.

B. F. McDonald, being sworn as a witness for the plaintiff, testified that he made an accurate survey of the rancho San Vicente; that he commenced at an oak tree, which had been marked, north of and near to the junction of said creeks, on the side of the pueblo hills; that he ran thence magnetic south 3° 6′ west, to the foot of "Sierra Azul," passing two or other marked trees, as directed and

testified to by Justo Larios; that he surveyed one league of land on the eastern side of that line, extending from the pueblo hills on the north to the "Sierra Azul" on the south, and extending towards the Laurel hills on the east for quantity; that the eastern boundary of the league so surveyed is indicated on his map by a red line. That the western line of the Berreyesa rancho, so run by him, at its point of departure from the general line of the "pueblo hills," forms on the east side an acute angle of about (80°) eighty degrees; that it crosses the general line of the cañada at about the same angle that it crosses the "Lomas Bajas," or mining ridge, about a half a mile to the west of the "New Almaden" mine, which is the highest peak of the ridge, and meets the "Sierra Azul" at a right angle with its general range. That the widow of José R. Berreyesa and some of the heirs reside in a house east of the Almitos creek, at a point marked on his map, "Max'o Fernandez;" that said map marked No. 1 was carefully drawn under his direction and superintendence, and is a correct representation of the one league of land so surveyed, with its hills, creeks, and all other features and points noted thereon; that he meandered the "Arroyo Alamitos," commencing at the southern termination of said dividing line in said "arroyo," and continuing down to its junction with the "Arroyo Seco," and it is correctly represented on said map. That he also determined the location of the "lomita," and meandered its base; that it consists of three small hills, with depressions between, and is correctly located and represented in his (McDonald's) map, No. 1. That the location of the "lomita" is not correctly represented on the Berreyesa diseño, but that it extends further towards the east than is there represented.

Wm. J. Lewis, a surveyor, was sworn as a witness for the defendants, and produced a map, which was also put in evidence as map No. 2. He testified that his map was a correct geographical and topographical representation of the premises described in the complaint, and the adjacent country; that he had surveyed the country so represented, and directed and superintended the making of the map, and that the natural objects are therein correctly represented; that the general direction of the cañada de los Capitancillos (or valley) is east 20° south and west 20° north, according to the true meridian. That he has examined the Berreyesa diseño (N,) and has compared the natural and artificial objects appearing thereon with those on the ground and on the map No. 2; that the compass work on the diseño (N) does not represent the magnetic meridian correctly; it inclines too much to the east of north and west of south.

He testified that the highest point of the "Lomas Bajas" (or mine ridge,) appeared on the diseño (N,) is at the eastern extreme of said "Lomas Bajas" or mine ridge. That the mine of New Almaden is situated in that peak, on the southeastern slope, as rep-

resented on map No. 2, where this elevation is denominated "Peak of Mine Hill;" that the dotted line on diseño (N) crosses the mine ridge entirely west of said elevation. That two elevations also appear on diseño (N,) in the range of mountains called the "Sierra Azul"—one at the southwest corner of the sketch, the other toward the eastern part of the range; that there are corresponding peaks or elevations on the "Sierra Azul," which are correctly represented on map No. 2 as "Mount Umunham" and "Mount Bache." That a line drawn through the extreme western point of the natural objects represented on the (B) diseño, as it originally accompanies the petition, and before the dotted line was drawn by Fernandez, would be correctly described on map No. 2, by drawing a line from the letter A, in the word arroyo, near to and below the junction of the Seco and Alamitos arroyos, across the cañada and the "Lomas Bajas" to the foot of the "Sierra Azul," in the direction of "Mount Umunham; that the dotted line on the diseño (N) is not precisely parallel with a line drawn as above supposed, but in running south diverges towards the east about five degrees; and that, if a line were drawn on map No. 2, making the same angle with the general direction of the cañada, as it is laid down on map No. 2, that the said dotted line on the diseño does with the general direction of the cañada as laid down on said diseño, it would extend from the junction of the said two creeks, across the cañada and mine ridge, to the foot of the "Sierra Azul," in the direction of a point about one-sixth of the distance from Umunham towards Bache. In its departure from the general line of the pueblo hills, it would form on its eastern side an angle of about 85°, and would intersect the "Lomas Bajas" range or mine ridge and the general line of the cañada at corresponding angles; that such a line would necessarily pass to the west of the mine, and quite as far to the west as the alleged conventional line surveyed and described by McDonald, from an angle with the general line of the "pueblo hills" of about 85° to the S. E. That a line run from the junction of the creeks aforesaid to the "Sierra Azul," magnetic south, would be several hundred yards west of said mine; that a straight line drawn from the junction of the creeks aforesaid, so as to pass through a point at the eastern base of the "lomita" to the "Sierra Azul," would leave the highest elevation of the "Peak of Mine Hill" to the west, would not directly intersect the "Lomas Bajas" range or mine ridge, but only cut off a spur of said ridge to the N. E., and would in fact cross the cañada obliquely in the direction of a point a little to the east of Mount Bache, forming, with the general line of the "pueblo hills" to the south and east, an angle of not more than 55°; and that the dotted line as drawn on the diseño strikes the "Sierra Azul" at a point about one-sixth of the distance between the two highest points of said sierra, as the same are drawn on said diseño—one-sixth of the distance from the more westerly of said points.

The lomita a hill with two depressions and three summits. There is no difficulty in ascertaining the eastern base of the lomita; it slopes down, and there is a space 100 yards in width; it then falls 11 feet from the point where I placed a stake to indicate the place. It falls 11 feet in 132 feet. Witness Lewis made a map, containing a bird's-eye view of the "lomita," on which the distances and elevation are correctly marked. These were obtained by actual measurement. Witness did not measure the base, but thinks it is correctly described on said map. Said map is hereto annexed, marked (G. P. J.,) and made part of this bill of exceptions.

The introduction of this and other general evidence of defendants was objected to by the plaintiff, but allowed so as to present statement of the case on both sides. The "lomitas" are not in the same straight line, but form with the central hill an obtuse outer angle towards the junction of the creeks aforesaid, this central hill being 291 feet nearer than the others; that the house in which Berreyesa resided before and at the time of his grant, is near the "Seco," about one and one-eighth of a mile from the junction of said creeks eastwardly, and that from thence to the eastern border of his diseño, marked Laurel, is one-half that distance.

The plaintiff also produced and read in evidence a deed, which was proved to be genuine, bearing date the 12th day of July, 1850, and duly recorded on the 15th day of the same month, by which the widow and heirs of said José Reyes Berreyesa, deceased, demised the demanded premises to Richard Roman, Charles V. Stewart and James Hepburn for the term of twenty years next ensuing; and it was further proved, that said leasehold estate was on the 12th day of September, 1855, assigned and transferred to the plaintiff for the residue of said term.

It was proved that the defendants, Walkinshaw and William E. Barrow, for some months prior to the commencement of this action, were, and continued to be, in the possession of all that part of said land described in the complaint, which lies to the west of the Arroyo Alamitos, embracing the mine and hacienda, claiming to have some right to said mine and land, and right under one Andreas Castillero, and receiving the profits thereof. It was proved that since the 12th day of September, 1855, the monthly yield of the New Almaden mine was two thousand flasks of quicksilver, each flask containing seventy-five pounds; that the general price of quicksilver was from sixty-five to seventy-five dollars per quintal; but for export to China it was forty-five dollars per quintal only.

To prove some right or title in Andreas Castillero, under whom the defendants claimed to hold the said mine and land, they called one Houghton, a witness in their behalf, who being sworn, testified that he was, and for four or five years had been, recorder of deeds in the county of Santa Clara; he then produced certain written documents in the words and figures following, viz:

Exhibit No. 1.

Señor Alcalde de 1a Nominacion:

Andreas Castillero, capitan de caballeria perman'te, y residente hoy en este departamento ante la notoria justificacion de V. D. hace presente, que habiendo descubierto una veta de plata con ley de oro, en terreno del rancho perteneciente al sargento retirado de la compañia presidial de San Francisco, José Reyes Berreyesa, y queriendo trabajarla en compañia suplico a V. D. que arreglado a la ordenanza de mineria, se sirva de fijar rotulones en los parajes publicos de la jurisdiccion para que llegado el tiempo de la posesion juridica asegure mi derecho, segun las leyes de la materia a V. D. suplico provea de conformidad, en lo que recibire merced y justicia; admitiendo este en papel comun por falta del sellado correspondiente.

Pueblo de San José Guadalupe, Noviembre veinte y dos de mil ochocientos cuarenta y cinco.

ANDREAS CASTILLERO.

Exhibit No. 2.

Señor Alcalde de 1a Nominacion del Pueblo de San José Guadalupe:

Andreas Castillero, capitan permanente de caballeria, ante la notoria justificacion de V. D. comparezco y digo; entablando el mineral que con auterioridad denuncié a ese juzgado, he sacado, a mas de plata con ley de oro, azogue liquido, en presencia de algunos concurentes que podré citar en caso. Y por convenir asi a mi derecho le he de merecer a V. D. que unido al escrito del denuncio, se archive esta presentacion, no zendo en papel del sello por no haberlo.

A V. D. suplico provea de conformidad, en lo que recibiré merced y justicia.

Santa Clara, Diciembre 3, de 1845.

ANDREAS CASTILLERO.

Exhibit No. 3.

No encontradose en el departmento de California, disputacion de mineria; y sinedo esta la unica vez dese la poblacion de Alta California, que se trabaja, con arreglo a las leyes, un mineral, y careciendo ademas de juez, de letras el 2o distrito. Yo, el alcalde de la nominacion, C. Antonio Maria Pico, he venido, acompanado de dos testigos, para actuar por receptoria a falta de escribano publico que no lo hay, para dar posesion juridica de la mina conocida con el nombre de Santa Clara, en este jurisdiccion, situada en el rancho del sargento retirado, José Reyes Berreyesa; por que habiendo fenecido el tiempo que señala la ordenanza de mineria para deducir su accion el C. D. Andreas Castillero, y que otras pudieran alegar mejor derecho, desde el tiempo del denuncio a la fecha, y en-

contrandose dicha mineral con abundancia de metales explotados, el hoyo hecho con las regals del arte y produciendo la elaboracion de la mina, abundancia de azogue liquido, segun las muestras que tiene el juzgado; y estando tan recomendado, por leyes vigentes, la proteccion de un articulo tan necesario para la amalgamacion de oro y plata en la republica, he venido en conceder tres mil varas de terreno por todas rumbos, a reserva de lo que señal al ordenanza general de mineria, por ser trabajada en compañia, de lo que doy fé firmando comnigo los testigos, quedando agregado este acto de posesion al cumulo del expediente que queda depositado en esta archivo de mi cargo no zendo en papel sellado por que no lo hay en los terminos de la ley.

Juzgado de San José de Guadalupe, y Diciembre, de 1845.

ANTONIO MARIA PICO.

De asa.: ANTONIO SUNOL,
De asa.: JOSÉ NORIEGA.

Translation of Exhibit No. 1.

Senor Alcalde o 1st Nomination:

Andres Castillero, captain of permanent cavalry, and at present resident in this department, before your notorious justification, makes representation: That having discovered a vein of silver with a ley of gold, on the land of the rancho pertaining to José Reyes Berreyesa, retired sergeant of the presidial company of San Francisco, and, wishing to work it in company, I request that, in conformity with the ordinance on mining, you will be pleased to fix up notices in public places of the jurisdiction in order to make sure of my right when the time of the juridical possession may arrive, according to the laws on the matter; I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper, there being none of the corresponding stamp.

Pueblo of San José Guadalupe, November twenty-second, eighteen hundred and forty-five.

ANDRES CASTILLERO.

Translation of Exhibit No. 2.

Señor Alcalde of 1st Nomination:

I, Andres Castillero, permanent captain of cavalry, before your well known justification, appear and say: That on opening the mine which I previously denounced in this court, I have taken out, besides silver with a ley of gold, quicksilver, in the presence of several bystanders, whom I may summon on the proper occasion; and, considering it necessary for the security of my right so to do, I have to request of you that, *muting* this representation to the denouncement, it may be placed on file, it not going on stamped pa-

per because there is none. I pray you to take measures to this effect, in which I will receive favor and grace.

Santa Clara, December 3d, 1845.

ANDRES CASTILLERO.

Translation of Exhibit No. 3.

There being no deputation on mining in the department of California, and this being the only time since the settlement of Upper California that a mine has been worked in conformity with the laws, and there being no "Juez de Letras" (professional judge) in the second district, I, the alcalde of first nomination, citizen Antonio Maria Pico, accompanied by two assisting witnesses, have resolved to act in virtue of my office, for want of a notary public, there being none, for the purpose of giving juridical possession of the mine known by the name of Santa Clara, in this jurisdiction, situated on the rancho of the retired sergeant José Reyes Berreyesa, the time having expired which is designated in the ordinance of mining for citizen Don Andres Castillero to show his right, and also for others to allege a better right between the time of denouncement and this date; and the mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the working of the mine producing a large quantity of liquid quicksilver, as shown by the specimens which this court has, and as the laws now in force so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the republic, I have granted three thousand varas of land in all directions, subject to what the general ordinance of mines may direct, it being worked in company; to which I certify, the witnesses signing with me, this act of possession being attached to the rest of the expediente, deposited in the archives under my charge; this not going on stamped paper, because there is none, as prescribed by law.

Juzgado of San José Guadalupe, December, 1845.

(Signed) ANTONIO MARIA PICO.

Attesting witnesses:

ANTONIO SUNOL,

JOSÉ NORIEGA.

He further testifies that when he first took charge of the office as recorder he found said written papers in it, but did not know when or by whom they had been lodged there. It was proved that the signatures to these papers were genuine; that Antonio Maria Pico was an alcalde during the year 1845. The defendants then, for the purpose of proving a title to said mine situated on the demanded premises, and a pertenencia of six thousand varas square upon the same in the said Andres Castillero, offered to read in evidence said documents numbered 1, 2, and 3, to which the plaintiff

objected on the following grounds: First, that they did not purport to be a registry of the mine, and there had been no proof of such registry; second, that the alcalde who had signed the certificate of possession, and who seemed to have acted in the premises, had no power or jurisdiction over the subject-matter; and, third, that proof so offered was wholly incompetent; but the court overruled the objection, and allowed said writings to be read, to which ruling the plaintiff then and there immediately excepted, and the exception was allowed.

They also produced a written contract of partnership, in reference to which Antonio Maria Pico, being sworn for the defendants, testified that the several parties thereto had appeared before him as alcalde, and had signed, or caused their names to be signed, to said contract; that he could not remember the time when, but believed it was so signed at the time of its date; that he did not know to whom it was delivered, or by whom it was afterwards kept. The defendants then read contract in evidence, which was in the words and figures following: (No. 4.)

Exhibit No. 4.

Escritura de compañia que el S'r Dn. Andres Castillero, cap'n de caballeria permanente celebra con el S'or Coma'te G'ral Don José Castro, los S'res Secundino Robles y Teodoro Robles, y una cesion voluntaria que hacer los compañeros perpetualmente, al R. P. F. José Ma. del Refugio Suarez del Real, de una mina de plata, oro y azogue en el rancho de D. José Reyes Berreyesa, en la jurisdiccion del pueblo de San José Guadalupe.

Art. 1. El Sñr. Dn. Andres Castillero, arreglandose en un todo a la ordenanza de minera, hace formal compañia perpetualmente con los mencionadas Señores en esta forma: la mitad de la mina que es de la que puede disponer, se dividira en tres acciones en esta forma cuatro barras al S'or Don José Castro; cuatro barras a los S'res Secundino y Teodoro Robles; y las otras cuatro barras al R. P. F. José Maria R. S. del Real en close de donacion perpetua.

Art. 2. Ninguno de los compañeros podra vender o engagenar niguna de sus acciones de manera que el que lo verificare, perdera su derecho, quedando reunido en los demas compañeros.

Art. 3. Los gastos se haran en proporcion a las acciones, llevandose una cuenta formal por un contador, que se pagara del fondo comun.

Art. 4. Arreglandoze en un todo a lo que previnne las ordenanzas de mineria, cualquiera diferencia se resolvarar por los mismos compañeros.

Art. 5. Disigira las labores, gastos y trabajos Dn. Andres Castillero; y en su defecto, el R. P. F. José Ma. R. S. del Real.

Art. 6. No se extraera de los productos, mas cantidades que las

que necesitan para el arreglo de la degociacion, hasta que se arreglen los trabajos; y qualquiera cantidad que sea, ha de ser con consentimento de todos los compañeros hasta que este arreglada la negociacion.

Art. 7. Estos convenios se autorizaran por el Señor prefecto del 2o distrito D. Manuel Castro, depositandose el documento original en el archive del partido; quedando una copia certificada por S. S. a los interesados.

Mision de Santa Clara, dos de Noviembre de mil ochocientos cuarenta y cinco.

ANDRES CASTILLERO,
Por el Señor Comdte. G'ral DON JOSÉ CASTRO,
ANDRES CASTILLERO,
FR. JOSÉ MA. DEL R. S. DEL REAL.

SECUNDINO ROBLES, y
Por los S'res TEODORO ROBLES,
FRANCO. ARCE.

Es copia fiel del original al que me remito, Sta. Clara Diciembre ocho del mil ochocientos cuarenta y cinco.

MAN'L CASTRO,
ANTONIO M. PICO.

Translation of Exhibit No. 4.

Writing of partnership executed by Don Andreas Castillero, captain of perman't cavalry, with the commanding general, Don José Castro, and the Señores Secundino Robles and Teodoro Robles, and a voluntary grant which the partners make *pertetually* to the Rev. Father Friar José Maria del Refugio Suarez del Real, of a mine of silver, gold, and quicksilver, in the rancho of Don José Reyes Berreyesa, in the jurisdiction of the pueblo of San José Guadalupe.

Art. 1. Don Andres Castillero, conforming in all respects to the ordinance of mining, forms a regular, perpetual partnership with the said persons in this form:

The half of the mine, which is that of which he can dispose, will be divided into three parts, in this manner: Four shares to Don José Castro, four shares to Señores Secundino and Teodoro Robles, and the other four shares to the Rev. Father José Maria R. S. del Real, as a perpetual donation.

Art. 2. Neither of the partners can sell or alienate any of his shares, so that he who may do so shall lose his right, which shall revert to the other partners.

Art. 3. The expenses shall be borne in proportion to the shares, a formal account being kept by an accountant, who will be paid from the common fund.

Art. 4. That prescribed by the ordinance of mining being complied with in everything, whatever deficiency may arise shall be decided by the partners themselves.

Art. 5. Don Andres Castillero will direct the labors, expenses, and works, and in his absence the Rev. Father Friar José Maria R. S. del Real.

Art. 6. Of the products, no larger quantities will be taken out than necessary for the arrangement of the negotiation, until the works shall be regulated; and whatever the quantity may be, it must be with the consent of all the partners until the negotiation may be arranged.

Art. 7. These agreements will be authenticated by the prefect of the second district, Don Manuel Castro, the original document being deposited in the archives of the district (partido), a copy certified by his honor being left with the persons interested.

Mission of Santa Clara, November 2d, one thousand eight hundred and forty-five.

ANDRES CASTILLERO,
For the Comdg. Gen. DON JOSÉ CASTRO,
ANDRES CASTILLERO,
FR. JOSÉ MARIA DEL R. S. DEL REAL.

SECUNDINO ROBLES, and
For the Señores THEODORO ROBLES,
FRANCISCO ARCE.

It is a copy of the original to which I refer.
Santa Clara, December 8th, 1845.

MANUEL CASTRO,
ANTONIO MARIA PICO.

They then produced the deposition of one J. M. Lafragua, taken before the United States land commissioners in the case of Castillero vs. The United States, No. , and under the following stipulations, viz:

Circuit Court United States, for the districts of California.

JAMES TOBIN
vs.
RO. WALKINSHAW, WM. E. BARRON, AND JAS. A. FORBES. } Action of Ejectment.

It is agreed that the deposition of José Maria Lafragua, taken before the United States commissioner in the case of Andreas Castillero vs. The United States, No. 366, and on file with the papers in said case, in the office of the surveyor general, may be read in evidence on the trial of this cause, with the like effect and subject

to the same objections as if taken in this case, it being expressly admitted, however, that the plaintiff has had no opportunity to cross-examine said witness.

C. W. F. SLOAN,
Of Counsel for Plaintiff.
HALLECK, PEACHY & BILLINGS,
Att'ys for Def't.

Filed the sixteenth day of October, A. D. 1856.
GEO. PEN JOHNSTON, *Clerk.*
WM. STONE BOTTS, *Dep. Cl'k.*

Offered to read in evidence said deposition and the documents therein referred to, of which the following are copies:

Deposition of Jose Maria Lafragua.

The United States associate law agent is present, and Judge Thornton, as associate counsel.

Questions by Mr. Peachy for Claimant.

1st question. What is your name, age and residence?

Answer. My name is José Maria Lafragua; my age 41 years; my residence in the city of Mexico.

2d question. Please to state what is your profession, and what public offices you have held.

Answer. I am a lawyer by profession, and have held the office of ministro de relaciones interiores y esteriores de Mexico, in the latter part of the year 1846; from 1848 to 1852 I was a senator of the Republic of Mexico, and I have been several times a deputy in the Mexican congress.

3d question. Look at the document shown to you, marked "A" (P. L.,) as an exhibit to this deposition, and state whether you have compared the writings therein contained with the originals, in the archives in Mexico; whether the same are accurate copies of said originals; whether the originals are in the office where they purport to be; whether you know any or all the signatures attached to said originals; what are your means of knowing said signatures, and are the same genuine?

Answer. I have compared all the papers in this document with the originals in the city of Mexico, in November, 1854, and found them all to be correct copies. The said originals are in the archives of the junta de mineria and in those of the ministero de relaciones. (In 1846 the business of the government relating to mines was conducted in the department of government called ministerio de justicia, and now it is in the department of the ministerio de relaciones esteriores, and the documents are properly in the latter department.) I know the signatures of all the persons whose names appear signed in said original papers in said archives; I have seen them all write, and have been familiar with their sig-

natures in many public documents, and in these I believe them all to be genuine.

4th question. Are you acquainted with the course of business in the departments of the government of Mexico? If yea, state whether copies of documents which are transmitted from one department of state to the other are preserved in the office from which they emanate, or whether minutes of the same are there kept.

Answer. I am acquainted with the course of business in the offices of the government of Mexico, and in each of the offices of state are kept copies of all papers originating in or emanating from that office; when papers are transmitted from that office to another office or department of state, these copies remaining are called minutas. When the minister of the department writes a despatch or official letter, the original or rough draft, called borador, is filed in the office, and constitutes the minuta of that transaction.

5th question. Look at the communication which was made by the junta de mineria, or by its president, Vincente Segura, on the 14th of May, 1846, to the minister of justice and public instruction, enclosing the petition of Andreas Castillero to said junta de mineria, dated May 12th, 1846, and state whether you have ever seen said communication in the office of the minister of justice and instruction aforesaid, and if it contains any minute made on it by the minister of justice; if yea, whether you have made a copy of that minute and can produce it?

Answer. I have seen the original communication made by said junta, enclosing said petition of Castillero, of which a copy appears here in the document exhibited, "A," (P. L.) I saw it in the office of the minister of foreign relations, to which the mining business had been *transerred*, as I said before. When I saw said papers in November, 1854, I saw on the margin of said communication a decree bearing the rubric of the minister of justice, which does not appear in the copies here presented, but which I then copied, and the true copy I then made I now produce, to be filed herewith, marked "B," (P. L.,) as an exhibit to this deposition. The reason why said marginal writing does not appear in this copy "A" (P. L.) is, because it was merely a minute of the document or memorandum of the decree.

6th question. Look at the document now shown to you, marked "C," (P. L.,) as an exhibit to this deposition, and state whether you are acquainted with the handwriting of Castillo Lanzas; if yea, by what means you are acquainted with it, and state whether his signature in said document is genuine, and also what office said Lanzas held at the date of said document?

Answer. I know said Lanzas' handwriting; have seen him write and have seen various communications from him, and this is his

genuine signature in this document. He was minister of foreign relations in May 23, 1846, the date of said document.

7th question. While you held any official position under the Mexican government, was any communication ever addressed to you relating to the mine of New Almaden, in Upper California; if yea, what action did you take on said communication?

Answer. While I was minister of interior and exterior relations, in November, 1846, I received a communication from the junta de mineria, relating to said mine. I, as minister aforesaid, reported said communication to the constituent congress, and recommended it in a memorial of December of the same year.

8th question. Have you in your possession the report you made on that occasion? If yea, please to produce it.

Answer. I have so much of my report as relates to this matter and produce it here, marked "D," (P. L.,) as an exhibit to this deposition. This exhibit is in printed form. The paragraphs marked with a pen on pages 65 and 66, embrace what I said about the matter in my report; the written note on page 118 relates to the document marked Num. 52. The two paragraphs marked with a pen in the margin of page 136 relate to the subject of said Castillero's mine; the marked paragraphs, partly marked with lead and partly with ink, on page 146, relate to the same matter. I made the marginal marks and annotations myself, to show what portions of the document relate to this particular subject. This document is taken out of a large bound volume, which embraced my whole report as minister of relations upon all subjects pertaining to my office, with accompanying documents. I took this portion for convenience, because it embraces everything which my said report contained relating to said Almaden mine, or Castillero's connection therewith. The book I speak of is a ponderous volume.

9th question. Who was president in Mexico when this grant "C," (P. L.,) was made?

Answer. General Paredes was president of the republic from January to July of the year 1846.

10th question. State what were the powers of Paredes as president; were they constitutional or not?

Answer. His powers were not constitutional; they were extraordinary. The organic basis of 1843 had been suppressed by revolution, and there was no constitution during the sway of Paredes. In August, 1846, the federal constitution of 1824 was re-established, and General Salas came into power by another revolution.

11th question. Had Paredes the power to grant vacant lands in the territories, by virtue of his extraordinary powers as president, or by the colonization law of 18th of August, 1824?

Answer. In my opinion, Paredes had the power to grant such lands under and by virtue of the law of August 18th, 1824, be-

cause in the 16th article of that law the president was authorized to adopt measures and arrange the affairs of colonization in the territories. In consequence of the revolution, Paredes became clothed with absolute power, embracing the legislative as well as the executive, and all other functions of the government.

12th question. Was it customary for the president of Mexico himself to sign documents, or was it done by the proper secretary?

Answer. It would depend upon the character of the document. Commissions, laws of the republic, and appointments were signed by the president; communications to the governors of the departments and to other high functionaries were signed by the ministers, and not by the president. The president did not sign grants of the public land, because those matters were communicated to the governors of departments.

13th question. In what light do you regard this document "C," (P. L.)?

(13th question and answer objected to by the U. S. associate law agent.)

Answer. It is a communication from the minister of relations to the governor of California. It is substantially the approval by the president, through the minister, of the petition of Castillero, and it contains a grant of land, or rather the consent by the president that the land should be granted; and I therefore consider it a title to the land.

Cross-examined by the U. S. Associate Law Agent.

1st question. Have you any interest, by way of commission or otherwise, depending in any manner upon the confirmation of this claim by the board of U. S. land commissioners?

Answer. I have no interest of any kind in the matter.

2d question. Is said Andreas Castillero still living; if yea, where, and what is his profession?

Answer. He is living; he has a hacienda about 4 leagues from the city of Mexico, on which he resides.

3d question. Has said Castillero recently held any civil or military office in Mexico?

Answer. I do not know that he holds any office at present, nor do I know of his having held any recently. I think he was a deputy in the Mexican Congress along about 1846. It was before 1846.

4th question. Do you know whether said Castillero ever returned to Upper California after May 23d, 1846?

Answer. I do not know whether he did or not.

5th question. Have you compared, verbatim, the paper "A" (P. L.) with the originals of which they purport to be copies; and when did you last see said originals?

Answer. I have compared them verbatim. The last time I saw the originals was when I compared them, which was between the 11th and 15th days of November, 1854.

6th question. Did you ever see said originals prior to that time?

Answer. I saw them in 1846, because I was then minister, and was obliged to examine all the acts of Paredes, for the purpose of laying them before the Mexican congress.

7th question. Was the minute of which you have spoken, "B," (P. L.,) on the document in the archives when you first saw it?

Answer. Yes; it was there written when I first saw said document in 1846.

8th question. Do you know of any grant of land in Upper California having been made by the general government of Mexico since the enactment of the colonization law of 1824?

Answer. I do not.

9th question. Does the supreme government of Mexico ever grant the fee simple title in mines, or were they not denounced under the mining laws?

(9th question and answer both objected to, as relating to written laws, and incompetent to prove them in this way.)

Answer. A title to a mine could not be obtained without the denouncement by the applicant under the mining laws. So long as the requirements of the mining laws were complied with, the applicant for a title could hold and enjoy a full and complete title in the mine forever, according to the ordinances. When I say his title was forever, I mean so long as he complied with the mining laws.

10th question. Were not continued occupation and possession, as well as the payment of the usual stipend, required by law?

(10th question. Same objection as to 9th.)

Answer. At this moment I do not remember the provisions of the mining law.

11th question. Does this minute or memorandum "B," (P. L.,) bear any date in the original of the time when it was written?

Answer. It has the date of May 20th, 1846, in the original in the archives, which I understood to be the time when said marginal decree was entered; the inverted commas or quotation marks in this copy are my own, and do not appear in the original.

12th question. What action did the Mexican Congress take upon your report, or upon the part thereof relating to this matter of Castillero's?

Answer. The Congress took no action upon it.

13th question. Were the actions of Paredes as president ever recognised or approved by the Mexican Congress?

Answer. Some of his acts have been approved, and some disap-

proved, as Congress thought proper, and his acts, until they were disapproved, were recognised as valid.

14th question. Was it not required that his acts should be submitted to Congress before they could acquire validity?

Answer. No, it was not necessary. There was no express provision to that effect in the plan which the government established. That was the plan of San Louis Potosi, of the latter part of 1845. Instead of saying "there was no express provision," &c., I would wish to say, I do not remember of any express provisions to that effect. I therefore repeat, that all the acts of Paredes were deemed valid until expressly annulled or disapproved by the government.

15th question. Was it not usual for officers acting under extraordinary powers to sign the acts done by themselves?

Answer. No. The president only signed, usually, such documents as I have before discriminated, even when invested with extraordinary powers.

16th question. Was not the Garay grant of lands, on the Isthmus of Tehuantepec, made under extraordinary powers, and was it not signed by the president?

Answer. I do not know whether the president signed that grant or not.

17th question. You have expressed in your examination in chief the opinion that Paredes had the power to grant lands under the colonization law of August, 1824, because by the 16th article of that law, the president was authorized to adopt measures of colonization. Did Paredes ever promulgate any regulations for the colonization of lands in the territories under said 16th article?

Answer. I do not remember of his issuing any such regulations.

18th question. Do you know of Paredes ever having made any change or departure from the ordinance of November, 1828, carrying out the decree of August, 1824?

Answer. I do not know of Paredes having made any change or departure such as the question suggests.

19th question. Was not the document "C" (P. L.) a recommendation to the governor of California in favor of Castillero to make him a grant according to the laws and dispositions regulating colonization in the territory of Upper California?

Answer. It is not a recommendation; it is an order given to the governor of California by the supreme government of Mexico to give Castillero the possession of the sitos mentioned in the document which had been granted to him (Castillero) on the 20th of May, 1846.

20th question. Look at the 8th proposition in the petition of Castillero in "A," (P. L.,) which is referred to in "C," (P. L.,) and state whether said proposition was not to have granted to him two square leagues as a colonist and agreeably to the colonization laws.

Answer. My opinion is, that the two sitos were to be granted to the petitioner for the benefit of the wood on the land. My individual opinion is, the grant was made to encourage the development of the mine.

Re-examined by Claimant's Counsel.

1st question. Look at the document signed by Isidro R. Gondra, in "A," (P. L.,) near the end of said exhibit, and state whether you know said Gondra's handwriting; if yea, your means of knowledge, and whether his signature thereto is genuine?

(This 1st question objected to by U. S. law agent as incompetent to prove what the document stated.)

Answer. I know said Gondra's handwriting. I have seen him write, and this is his signature.

(Signed) J. M. LAFRAGUA.

Subscribed and sworn to before me on this 30th day of January, A. D. 1855.

(Signed) PETER LOTT,
Commissioner.

Filed in office January 30, 1855.

(Signed) GEO. FISHER,
Secretary.

Exhibit "C" to the Petition. Exhibit "A" (P. L.) to Deposition of Jose Maria Lafragua.

{Para los anos de 1850 y 1851.}

Sello Primero—Ocho Pesos.

Junta de Fomento y Administracion de Mineria.

Numero 573.

EXMO. SEÑOR: Habiendo presentado a esta junta 'el Señor Profesor Don Tomas Ramon del Moral, unas muestras di cinabrio de la Mision de Santa Clara en la baja California, que le remite Don Andres Castillero, asi como las adjuntas copias, con el objecto de escitar al supremo gobierno para que se sirva auxiliar tan importante impresa inmediatiamente remito dichas muestras al E. S. director del colegio para que se hiciesen los debidos ensayos, S. E. con oficio de veinte y nueve del pasado, recibido ayer, le dice lo que signe:

El Señor Don Tomas Ramon del Moral, Presidente de la Junta Facultativa, del Colegio Nacional de Mineria, me dice lo que sigue:

EXMO. SEÑOR: Habiendose enterado la junta facultativa de los documentos que V. E. le pasó el veinte y uno del presente mes relativo a un criadero de ciuabrio descubierto en California por el Señor Don Andres Castillero, y a otro de carbon de piedra de la

Bahia de San Francisco, tiene el honor de informa a V. E. que las muestras remitidas por dicho Señor Castillero estaben ya depositadas en el gabiente de mineralogia unas, y otras ensaryadas por el profesor de Quimica Don Manuel Herrera. El ensayo dio una ley de trienta y cinco y medio por ciento, tomando para hacerlo una meseta de las diferientes muestras, porque hay algunas tan ricas que son de cinabrio puro la junta cree que el Señor Castillero se ha hecho digno, por tan importante descubrimiento, de la eficaz proteccion del supremo gobierno y de la junta de fomento de mineria, y esta presuadido de que V. E. interpondra todo su influjo a fin de que este individus reciba una prueba de que el supremo gobierno sabe distinguir y premiar a los ciudadanos que contribuzen a la prosperidad de la patria.

Reproduzco a V. E. con este motivo, las consideraciones de mi estimacion y respeto.

Y tengo el honor de trasladarlo a V. S. S. como resultado de su oficio relativo. La junta al insertar a V. E. al anterior comunicacion, tiene el honor de participarle que ha preguntado ya al Señor Castillero la clase de auxilios ó de proteccion de que necesita, para fomento de su brillante empresa, felicitando al supremo gobierno por un discubrimiento que si encuentra en un principio toda la proteccion que se merece, pueda cambiar completamente el aspecto de muestra mineria, libertandola de la necesidad en que ha estado hasta ahora del azogue estrangero.

La junta con este motivo aprevecha la oportunidad para participar a V. E. que como el veinte cuatro del presente niese termina la gracia que concedio la ley, de cinco pesos de primo a cada quintal de azogue estraido de las minas nacionales, han acreditado hasta la fecha los mineros de Guadalcazar haber explotado mil quinientos sesenta y cinco quintales, de Diciembre de ochocientos cuarenta y cuatro a fin de Marzo procsimo pasado, cuyo resultado excede del calculo que hasta ahora se habia hecho de que la produccion de este mineral era de cien quintales mensuales.

La junta reitera a V. E. con este motivo las protestas de su distinguida consideracion y aprecio.

Dios y libertad. Mexico, Mayo cinco de mil ochocientos cuarente y seis.

VICENTE SEGURA, *Presidente.*

Por ocupacion del secretario, Ysidro R. Gondra, oficial primero.

E. S. ministero de justicia.

Es copia. Mexico, Abril veinte tres de mil ochocientos cincuenta.

O. MONASTERIO.

Secretaria de la Junta de Fomento de Mineria.

El Señor Don Andreas Castillero, comisionado por el supremo gobierno, el año procsimo pasado, para pasar a Californias a desempeñar objecto del servicio publico, me dice en cartas escritas

de la mision de Santa Clara en diez y nueve, y veinte y dos de Feb'ero del presente año lo que sigue:

A distancia de cinco leguas de esta mision al oeste, he descubierto y denunciado una mina abundantisana de azogue, y a confirmar mi verdad remito a V. S. unas piedras de las que se han tomado por encima de la veta tambien va uno poco de azogue del que sacamos con la mayor facilidad. El Señor director del colegio de mineria Don Ramon del Morall, ha de reciber mucho gusto al ver igualadas las piedras de Almaden. Segun lo mucho de la veta y abundancia de saca de metales, dentro de un año mediante la proteccion del gobierno supremo, no necesitara la republica azogue de afuera. Remito a V. algunas frioleras hechas por los indios del nor-oeste y producidas de aq'eti: el carbon de piedra es abundantisimo, y se encuentra en las costas de la Bahia de San Francisco, de modo que los buques de vapor, hechando sus embracaciones menores, pueden cargar todo lo que necesiten: este descubrimiento lo hizo el Señor Coronel Don Juan Bautista Alvarado: el cristal de roca es un muy grande.

Es copia. Mexico, Abril trece de mil ochocientos cuarente y seis.

J. J. DE HERRERA.

Señor Director del Colegio de Mineria, Don Ramon del Moral.

Mision de Santa Clara.

Febrero diez y nueve de mil ochocientos cuarenta y seis.

Mi Estimado Amigo y Señor que Aprecio.

V. sabe lo aficionado que soy al ramo de mineria, y empeñado en encontrar una mina buena de azogue: he dado aqui con un creadero abundantisimo; al Exmo. Señor presidente remito junto con esta mas piedras de cinabrio y un poco de azogue; estamos formando un horno y hemos ensayado dicho metal en un cañon de escopeta, tapado el vido con barro y metido la voca en agua, asi nos ha dado el treinta por ciento.

Yo estimaria a V. que se tomase el trabajo, en obsequio del bien publico, que se ensayase este metal, por depender de su trabajo este operacion.

Que V. y toda la familia se conserven buenos y que mande cuanto guste a su afectisimo S. S. Q. B. S. M.

ANDRES CASTILLERO.

Son copias. Mexico, Mayo cinco de mil ochocientos cuarente y seis.

YSIDRO R. GONDRA,
Oficial Primero.

Es copia. Mexico, Abril, veinte y tres de mil ochocientos cincuenta.

O. MONASTERIO.

Ex'mo Senor:

Por la nota de V. E. de cinco del actual y copias que sirvio acompañar, queda enterado con satisfaccion el E. S. presidente interno de la republica, de que en la mision de Santa Clara de la Baja California ha discrubierto el Señor Don Andreas Castillero, un creadero de azogue de excelente calidad, segun los ensayos practicados en ese colegio, y de que se ha preguntado ya por esa junta al repetido Señor Castillero, la clase de auxilios que necesita para fomento de su brillante empresa. Asimismo se ha impuesto S. E. de lo que participa esta junta con respecto de la cantidad de azogue estradio de las minas de Guadalcazar, cuyo resultado ha excedido el calculo que se habia formado. Lo que tengo el honor de dicer a V. E. en contestacion, reiterandole con este motivo las protestas de mi consideracion y aprecio.

Dios y libertad. Mexico, Mayo nueve de mil ochocientos cuarenta y seis.

BECERRA.

E. S. Don VICENTE SEGURA,
Presidente de la Junta de Fomento de Mineria.

Es copia. Mexico, Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERIO.

Junta de Fomento y Administracion de Mineria.

Ex'mo Señor:

Como tuvo el honor este junta de anunciar a V. E., en cinco del corriente, bajo el numero quinientos setente y tres, el Señor Don Andreas Castillero le ha dirigido la solicitud, que original tiene el gusto de acompañar a V. E.; sobre auxilios que necesita para el nuevo describrimiento de la mina de azogue en la mision de Santa Clara del departmento de Californias. La junta no duda recomendar a V. E. dicha solicitud, porque persuadida de la grande importancia de la empresa, la considera acredora à toda la proteccion del supremo gobierno, cuando por otro parte las circumstancias particulares de aquel departmento, y el justo empeño que ha manifestado el Ex'mo Señor presidente por conservar la integridad del territorio nacional, lo hacen digno de la mayor consideracion, por consiguiente, la junta es de paracer que se le facilitile inmediatamente al Señor Castillero la cantidad de cinco mil pesos en los terminos que propone; que la autorice para franquear las retortas y frascos de fierro de su pertenencia y los otros mil pesos que podran emplearse en la construccion de retortas, cilindros y otros aparatos pequeños de distilacion, para dicha mina, aunque la ley autoriza a la junta para hacer prestamos en fomento de los criaderos de azogue, exige el princio de un cinco por ciento anual

al capital que ese preste, es indudable que la oferta del Señor Castillero de pagar los cinco mil pesos con cincuenta quintales de azogue puestos en Mazatlan à disposicion de la junta, a razon de cinco pesos cada uno, y en el termino de seis meses, presta sin duda mayores ventajas al fondo que el indicado interes.

La urgencia que manifesta el Señor Castillero para verificar su marcha a aquel departmento y lo que a ella pueda contribuir, en las circumstancias presentes, para la conservacion del territorio nacional, es en concepto de la junta, mas que suficiente motivo para dejar a época mas oportuna la formacion de un contrato de compañia ó de avio para el fomento de dicha mina.

Resta pues manifestar a A. V. que aunque la posesion dada al Señor Castillero per las autoridades locales de Californias, no ha sido conforme a la ordenanza, pues que se le han concidido pertenencias en la estencion de tres mil varas equivalen a quince pertenencias conforme al articulo segundo del titulo octavo, es preciso considerar que rune en su favor la calidad de descubridor de un cerro absolutamente nuevo en que no habia ninguna mina abierta, a quienes se conseden, en el articulo primero del titulo sesto, tres pertenencias continuas ó interrempidas, y si hubiesen descubierto mas vetas, una en cada una de ellas. Rame tambien la circumstancia de trabaja en compañia a las que se concede que sin perjuicio del derecho que por el titulo de descubridor tengan cuando lo sean, el que puedan denunciar cuatro pertenencias nuevas aun cuando esten contiguas y por un mismo rumbo; pero lo mas digno de consideracion es que siendo Californias un departmento fronterizo y amagado con frecuencia por los emigrados de los Estados Unidos de America, y por los nueves colonos del Oregon, parece conceder a la primera mina discubierta en un departmento tan vasto, mayor numero de pertenencias, lo que corrobora la razon que se enquentra al fin del articulo 1o, titulo octavo que dice:" considerano que los limites establicidos en las minas de estos reynos a que se han arreglado hasta ahora los de Nueva España, son muy estrachas a proporcion de la multitud, abundancia, y felicidad de las venas metalicas que la misma bondad del cridor ha querido conceder a aquellas regiones, ordeno y mando que las minas que en adelante se descubrieren en veta nueva ó sin vecinos, se observan estas medias. 2o. Por el hilo, direccion ó rumbo de la veta, sea de oro, de plata, ó de cualquiera otro metal, concedo a todo minero sin distincion de los descubridores (que ya tienen asignado su primo,) dos cientas varas castellanas que llaman de medir, tiradas a nivel." Per ultimo, en el articulo primero titulo once se espresa en estos terminos. "Y porque no siendo, suficiente el caudal de uno solo para grandes empresas, puede serlo de todas dos compañeros, quiero y mando se procuren, promuevan, y protejan semejantes compañias por todas los terminos convenientes, concediendo mi virey todas las gracias, auxilios, exenciones que fueren de conceder a juicio y dis-

crecion del real tribunal de mineria y sin detrimento del interes del publico y de mi real erario."

En cuanto a la propriedad que solicita el Señor Castillero como colono, de dos sitios de ganado mayor sobre la superfice de su propiedad minera, con el objecto de proporcionarse la leña necesaria para el beneficio, la junta no teniendo los conocimientos necesarios en la materia, en que abunda al supremo gobierno, siempre resolvera el Ex'mo Señor presidente lo que crezere mas conveniente. En tal concepto, al elevar V. E. esta junta la solicitud del Señor Castillero no duda recomendarla muy eficazmente por la importancia vital de la empresa, y su incredible transcendencia en el bien general y la prosperidad de la republica. La junta tiene el honor, con tal motivo de reiterar a V. E. las protestas de su distinguido aprecio y consideracion.

Dios y libertad. Mexico, catorce de Mayo, de mil ochocientos cuarenta y seis.

VICENTE SEGURA,
Presidente.

Ex'mo Señor Ministero de Justicia e Ynstruccion Publica.

Es copia. Mexico, Abril, veinte nueve de mil ochocientos cincuenta.

O. MONASTERIO.

Sello tercero, cuarto reales, años de mil ochocientos cuarenta y seis y mil ochocientos cuarenta y siete.

Andreas Castillero, vecino y minero en el departmento de la Alta California, ante V. E. y V. S. S. como mejor proceda, digo; que habiendo descubierto en la mision de Santa Clara una mina de azogue de leyes tan altas como seguramente no se han visto en solo en la republica sino acaso en el mundo entero, como lo acreditan los ensayos hechos de orden de la junta facultativa del colegio de minera, que reuniendo de todas las muestras que traje, desde la mejor hasta la infirma, han dado por resultado un treinta y cinco y medio por ciento, mientras que ha habido muestra de las superiores que deben producir leyes mucho mejores; me veo en el caso, para satisfacer mis deseos en favor del progreso de mi patria, de aprovechar esclusivamente en favor de los Mejicanos, las disonjeras y muy fundadas esperanzas que proporciona semejante descubrimiento. En tal vertud, he denunciado y tomado posesion no solo di dicha mina denominada Santa Clara, sino de una estencion de hasta tres mil varas en todas direcciones de dicho punto, he formado una compañia para su labores, he construido el tiro y cumplido todas las condiciones que previene la ordenanza, quedando la mina en frutos con la notable circumstancia de que las muestras que traje y que se han ensagado, han sido estraidos de la voca.

Muy facile me habria sido haber dado todo el vuelo necesario a la

negociacion, admitiendo las repetietas y ventejosas ofertas que se me han hecho por varias casas estranjeras de Californias, pero la empresa no necesita de semejantes auxilios que resultarian en ventaja estrana, cuando todo puede ser nacional, y no he dudado por lomismo ocurrir ante V. E. y V. S. S. para conseguir los unicos y pequeños recursos de que necessito; ellos se reducen a ma corta anticipacion de cinco mil pesos en dinero, atendida la escesiva escasez de numevario que hay en aqual departmento, y la pronta remision a el de retortas, cilindras, y otras aparatos pequeños de distilacion asi como de frascos de fierro para el envase de azogue.

Yo habria propuesto un contracto de compañia a la junta, un avio, ó cualquiera otro convenio, si tuviese tiempo para poder proporcionar los datos y circumstancias que se requieren para dichos contratos; pero comprometido por el supremo gobierno a marchar de este capital dentro de algunas dias, me veo en el casa de limitarme a lo que parece no presentar dificultad, y abre el campo a nuevos convenios posteriores. Estoy bien pursuadido de que la junta accedera a mi solicitud en todo aquello que este en sus facultades, y que elevara al supremo gobierno, con recomendacion lo que sea del resorte de este.

Mis proposiciones pues son las siguientes:

Primera.—La junta, en el acto de aprobar el convenio, me entregara una liberanza contra una casa de comercio en Mazatlan valiosa de cinco mil pesos.

Segunda.—Por mi parte me comprometo a situar en dicho puerto a los sies meses de haber salido de el, cincuenta quintales de azogue, a razon de cien pesos cada uno, que remitiré de las primeras estracciones con absoluta preferencia a todo otro compromiso.

Tercera.—La junta mandara poner a mi disposicion antes de mi salida de la capital, las ocho retortas de fierro que tiene en su oficina y todos los frascos para azogue que se halan en la negociacion de tasco, en estado de uso, y por ultimo entregará al Señor Don Tomas Ramon del Moral, mi apoderado, las cantidades que importen las retortas, cilindros, y otra clase de aparatos pequeños que se mande hacer para la negociacion, hasta la cantidad de mil pesos.

Cuarta.—Las retortas de la junta las recibire por el precio de su costo, y los frascos que escoja á dos pesos cada uno conforme á su avaluo.

Quinta.—El importe liquido de dichas retortas y frascos y el de las cantidades que se hayan entregado al Señor Moral lo devolveré en el termino de un año de este convenio, asi como el premio de la libranza contra Mazatlan, en azogue puesto en dicho puerto al precio de cien pesos quintal: pero se la junta quisiere tomar una ó mas acciones en la mina quedara en parte de la cantidad correspondiente a una ó mas barras.

Sexta.—Entretanto que se arregla la compañia, durante un año

contado desde el dia en que se apruebe este convenio, y satisfechos ya los cinco mil pesos de que habla la proposicion primera preferiré a la junta en la venta de azogue puesto en Mazatlan a razon de cien pesos quintal.

Setima.—La junta representara al supremo gobierno la necesidad de que apruebe la posesion que se me ha dado de la mina por las autoridades locales de Californias, en los mismos terminos en que hoy la tengo.

Octava.—Ygualmente le representara las rentajas de que como colono se me conceda dos sitios de ganado mayor sobre el terreno de mi posesion minera, con el objecto de poderme aprovechar de las maderas, para mis quemas.

Novena.—Al complimento de esta contrato hipoteco la misma mina y todas sus pertenencias.

El que subscribe sugeta a la deliberacion de la junta esta solicitud, la que aceptada se podra elevar a contrato formal y legalizar del modo mas conveniente.

Dios y libertad. Mexico, doce de Mayo de mil ochocientos cuarenta y seis.

ANDRES CASTILLERO.

Es copia. Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERO.

Ex'mo Señor: Habiendo dado cuenta al Ex'mo Señor presidente, interino de la republica con la nota de V. E. de catorce del presente, a que se sirvio acompañar con recomendacion la solicitud del Señor Don Andres Castillero para el fomento de la mina de azogue que ha descubierto en la mision de Santa Clara en el Alta California; se ha servido S. E. aprobar en todas sus partes el convenio celebrado con dicho individuo, para principiar la esplotacion de dicho mineral, y con esta fecha se hace la comunicacion que corresponde al ministerio de relaciones esterioses y gobernacion, para que libre las ordenes oportunas por lo respectivo a lo que contiene la octoiva proposicion a la concesion de terrenos en aquel departmento.

Reitero á V. E. las protestas, &c.

Dios y libertad. Mexico, veinte de Mayo de mil ochocientos cuarenta y seis.

BECERRA.

Ex'mo Señor Don Vicente Segura,
Presidente de la Junta de Fomento de Mineria.

La anterior se comunicó á este ministerio de relaciones diciendo, "Y tengo el honor de insertarlo á V. E. a fin de que por lo respectivo a la solicitud del Señor Castillero, a que ha tenido a bien acceder el Ex'mo Señor presidente interino, sobre que como colono,

se le conceda dos sitios de ganado mayor sobre el terreno de su posecion minera, se sirva V. E. librar las órdenes de que se trata.

Reitero á V. E., &c.,

BERERRA.

Fecha ut supra.

Ex'mo Señor Ministero de Relaciones Exteriores y Gobernacion.

Es copia. Mexico, Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERO.

Exhibit "D" to the Petition, being a Translation of Exhibit "C" to Petition, and "A," (P. L.) to Deposition of Lafragua.

First Stamp—Eight Dollars.

{ Seal for the years } { 1850 and 1851. }

No. 573.

Junta for the Encouragement and Administration of Mining.

MOST EXCELLENT SIR: Professor Don Tomas Ramon del Morale having presented to this junta some specimens of cinnabar from the mission of Santa Clara, in Lower California, which Don Andreas Castillero sent him, together with the annexed copies, with the object of inciting the supreme government, that it may be pleased to aid so important an enterprise, said specimens were immediately sent to his excellency the director of the college, that the proper assays might be made. His excellency, in an official communication of the 29th of last month, received yesterday, says that which follows: "Señor Don Tomas del Morale, president of the junta facaltativa of the National College of Mining, in an official communication of the 24th ult., says to me as follows: 'Most Excellent Sir: The junta facultativa having examined the documents which your excellency referred to it on the 21st of the present month, relative to a deposit of cinnabar discovered in California by Señor Don Andreas Castillero, and another of coal on the bay of San Francisco, has the honor to inform your excellency that the specimens sent by said Señor Castillero were deposited, some in the mineralogical cabinet, and others assayed by the professor of chemistry, Don Manuel Herrara. The assay gave a ley of thirty-five and a half per cent., a mean of the different specimens having been taken to make the assay, for there are some so rich that they are pure cinnabar. The junta believes that Señor Castillero has, by such an important discovery, made himself deserving of the efficacious protection of the supreme government, and of the junta for the encouragement of mining, and is persuaded that your excellency will interpose all your influence to the end that this individual may receive a proof that the supreme

government knows how to distinguish and reward those citizens who contribute to the prosperity of the country.'

"And with this motive, I repeat to your excellency the considerations of my esteem and respect, and I have the honor to transmit to your excellencies, as the result of your despatch on the matter."

The junta, on enclosing the foregoing communication to your excellency, has the honor to inform you that it has already asked Señor Castillero what kind of aid or protection he needs for the encouragement of his brilliant enterprise, congratulating the supreme government on a discovery, which, if it meets from the beginning, with the protection it deserves, may change completely the aspect of our mining, freeing it from the necessity in which it has been until now, of foreign quicksilver. With this motive, the junta takes advantage of the opportunity to inform your excellency that, as on the 24th of this month, the bounty terminates, which the law granted, of five dollars premium on each hundred weight of quicksilver extracted from the mines of the nation, the mines of Guadalcazar have proved that they have taken out one thousand five hundred and twenty-five quintals, from December, eighteen hundred and forty-four, to the end of March last, which result exceeds the calculation, which, until now, has been made; that the product of this mineral was a hundred quintals per month. The junta, on this occasion, reiterates to your excellency the assurances of its distinguished consideration and esteem.

God and liberty. Mexico, May 5th, 1846.

VICENTE SEGURO,
President.

The Secretary being occupied.

YSIDRO R. GONDRA,
First Clerk.

To his excellency the Minister of Justice.

It is a copy.
Mexico, April 23d, 1850.

O. MONASTERO.

OFFICE OF THE SECRETARY OF THE JUNTA
FOR THE ENCOURAGEMENT OF MINING.

Señor Don Andreas Castillero, commissioned last year by the supreme government to pass to California on an object of public service, tells me, in letters written from the mission of Santa Clara, on the nineteenth and twenty-second of February of this year, that which follows:

"At the distance of five leagues from this mission, to the west, I have discovered and denounced a very abundant mine of quick-

silver, and to confirm my truth I send you some ores of those which have been taken from the top of the vein; a little quicksilver also goes, which we have taken out with the greatest facility. The Señor director of the college of mining, Don Ramon del Moral, will receive much pleasure in seeing equalled the ores of Almaden. From the width of the vein, and the abundance of metals taken out, within one year, with the protection of the supreme government, the republic will not need quicksilver from foreign parts. I send you some trifles made by the Indians of northwest, and products of this country; coal is very abundant, and is found on the coasts of the bay of San Francisco, so that the steamers sending out their small boats may load all that they require; this discovery was made by Colonel Don Juan Bautista Alvarado; the rock crystal is a very large hill."

Copy. Mexico, April 13, 1846.

J. J. DE HERRERA.

Señor director of the College of Mining,
"DON RAMON DEL MORAL."

MISSION OF SANTA CLARA, *February* 19, 1846.

My Esteemed Friend and Appreciated Sir:

You know how devoted I am to the branch of mining, and intent upon finding a mine of quicksilver. I have discovered a most abundant deposit. With this I send to his excellency, the president, some ores of cinnabar, and a little quicksilver. We are forming a furnace, and have assayed said metal in a musket barrel, the touch-hole stopped with clay, and the muzzle put in the water; in this manner it has given us thirty per cent. I would esteem it a favor if you would take the trouble, for the sake of the public good, to cause this metal to be assayed, as this operation depends upon your work. May you and all the family retain good health, and as much as you please command

Your obedient servant, &c. &c.,
"ANDRES CASTILLERO."

The above is a copy. Mexico, April 23, 1850.

O. MONASTERO.

MOST EXCELLENT SIR: By your excellency's note of the 5th inst., and copies which you were pleased to transmit therewith, his excellency the president ad interim of the republic learns with satisfaction that in the mission of Santa Clara of Lower California, Señor Don Andreas Castillero has discovered a deposit of quicksilver of excellent quality, according to the assays made in that college, and that said Señor Castillero has been asked by that junta what kind of assistance he needs to encourage his brilliant enterprise. His excellency is likewise informed of that which the junta

reports relative to the quantity of quicksilver extracted from the mines of Guadalcazar, the result of which has exceeded the calculations which were made. This is what I have the honor to say to your excellency in answer, repeating to you with this opportunity the assurances of my consideration and esteem.

God and liberty.

Mexico, May 9, 1846.

BECERRA.

His Excellency DON VICENTE SEGURA,
President of the Junta for the Encouragement of Mining.

Copy. Mexico, April 23, 1850.

O. MONASTERIO.

JUNTA FOR THE ENCOURAGEMENT AND ADMINISTRATION OF MINING.

MOST EXCELLENT SIR: As this junta had the honor to inform your excellency on the 5th inst., in number 573, Señor Don Andreas Castillero has directed to it a petition, the original of which it has the pleasure to transmit herewith, upon the assistance which he needs for the new discovery of the quicksilver mine in the mission of Santa Clara, in the department of Californias. The junta has no hesitation in recommending said petition to your excellency, for, being persuaded of the great importance of the enterprise, it considers it entitled to all the protection of the supreme government; and also, the particular circumstances of that department, and the just desire which his excellency, the president, has shown to preserve the integrity of the national territory, render it worthy of the greatest consideration. The junta is consequently of opinion that there should be immediately furnished to Señor Castillero the sum of five thousand dollars, in the terms he proposes; that it should be authorized to furnish him with iron retorts and flasks belonging to it, and the other thousand dollars which can be employed in the construction of retorts, cylinders, and other small apparatus of distillation for said mine. Although the law authorizing the junta to make loans for the encouragement of deposits of quicksilver exacts a premium of five per cent. per annum on the capital loaned, it cannot be doubted that the proposal of Señor Castillero to pay the five thousand dollars with fifty quintals of quicksilver, placed in Mazatlan, at the disposition of the junta, at the rate of one hundred dollars each, and in the term of six months, offers greater advantages to the fund than the said interest. The haste shown by Señor Castillero to put in execution his journey to that department, and that which his so doing may contribute under present circumstances towards the preservation of the national territory, is, in the opinion of the junta, a sufficient motive to leave, until a more opportune occasion, the formation of

a contract of partnership, or of "avio," for the encouragement of said mine; it remains, then, to show to your excellency that although the possession given to Señor Castillero, by the local authorities of California, has not been in conformity with the ordinance, inasmuch as there have been granted him "pertenencias" to the extent of three thousand varas, which are equivalent to fifteen "pertenencias," agreeably to the second of the eighth title; yet it is necessary to consider that he has in his favor the qualification of being discoverer of an absolutely new hill, in which there was no mine open, and to such there is granted in the first article of the sixth title three "pertenencias," either continuous or interrupted; and if he shall have discovered other veins, one ("pertenencia") in each of them. He has also in his favor the circumstance that he works it in company with others, to whom there is granted that, without prejudice to the right which they may have by the title of discoverers when they are such, they may denounce four new pertenencias, even though they are contiguous, and in the same direction; but that which is most worthy of consideration is, that Californias being a frontier department, and frequently threatened by the emigrants from the United States of America, and by the new colonists of Oregon, it seems proper to grant to the first mine in a department so extensive, a greater number of "pertenencias," which view is corroborated by the reason found at the end of the eighth title, article 1st, which says: "Considering that the limits established in the mines of these kingdoms, to which those of New Spain have, until now, been made to conform, are very contracted in proportion to the multitude, abundance, and richness of the metallic veins which the goodness of the Creator has been pleased to grant to those regions, I order and command that in mines which may hereafter be discovered in a new vein, or without neighbor, these measurements be observed.

"2d. Along the thread, direction, or course of the vein, be it of gold, silver, or any other metal, I grant to every miner, without distinction of the discoverers, (who have their reward already assigned to them,) two hundred Castilian varas, called 'varas de medir,' measured on a level." Lastly, in the first article, eleventh title, there are expressed these terms: "And because the capital of a single individual may not be sufficient for great undertakings, while that of all the partners may be, I will and command that such companies be encouraged, promoted, and protected by all convenient measures, my viceroy granting to those who may form such every favor, aid, and exemption, which can be granted them according to the judgment and discretion of the royal tribunal of mines, and without detriment to the public or to my royal treasury."

In reference to the ownership of two square leagues, which Señor Castillero solicits as a colonist, upon the surface of his min-

ing property, for the purpose of supplying himself with fire-wood necessary for the reduction of ores, (beneficio) not having the necessary information on the matter, of which the supreme government has abundance, his excellency, the president, will decide as he may think proper. In this view the junta in sending up to your excellency the petition of Señor Castillero has no hesitation in recommending it very efficaciously on account of the vital importance of the undertaking; its incredible influence upon the general good and *prosterity* of the republic.

The junta has the honor on this occasion to repeat to your excellency the assurance of its distinguished esteem and consideration.

God and liberty. Mexico, May 14th, 1846.

VICENTE SEGURA,
President.

His Excellency the MINISTER
of Justice and Public Instruction.

Copy. Mexico, April 23, 1850.
(Signed) O. MONASTERIO.

Stamp third—Four reales: for the years eighteen hundred and forty-six and eighteen hundred and forty-seven.

I, Andres Castillero, resident and miner in the department of Upper California, before your excellency and your honors, as I best may proceed, say: That having discovered in the mission of Santa Clara a mine of quicksilver, of leys richer certainly than were ever seen before, not only in the republic, but perhaps in all the world, as shown by the assays made by the order of the junta facultativa of the college of mining, which, mixing together all the specimens I brought, from the best to the worst, have given a result of thirty-five and a half per cent., while there have been specimens of the best kind which must produce much greater leys, I see myself in a condition to satisfy my desires in favor of my country, of benefiting exclusively Mexicans by the flattering and well founded hopes which such a discovery offers. In virtue of this I have denounced and taken possession not only of said mine named Santa Clara, but also of an extent of three thousand varas in all directions from said point. I have formed a company to work it; I have constructed the pit, and complied with all the conditions prescribed by the ordinance; the mine yielding ore, with the notable circumstance that the specimens which I brought, and which have been assayed, have been taken out of the mouth. It would have been very easy for me to have given the necessary extension to the negotiation by accepting the repeated and advantageous offers which have been made to me by several foreign houses in California; but as the undertaking does not require that kind of assistance, which would result in advantage to foreigners, when it may

be entirely national; and I have not for that reason hesitated to apply to your excellency and your honors to obtain the small and only resources which I need; these are reduced to a small advance of five thousand dollars in money, in consideration of the excessive scarcity of coin in that department, and the quick remittance to it of retorts, cylinders, and other small distilling apparatus, as also iron flasks for bottling up the quicksilver. I would have proposed a contract of partnership to the junta, an "avio," or some other agreement, if there had been time to be able to furnish proofs and details which would be required for said contracts; but being compromised by the supreme government to leave this capital within a few days, I find it necessary to restrict myself to that which appears to present no difficulty, and which may open a way to our future agreements. I am well persuaded that the junta will accede to my request, so far as may be within its powers; and that it will send up to the supreme government, with a recommendation, that which may require the decision of the latter. My propositions then are the following:

First. The junta in the act of approving the agreement will give me a draft for five thousand dollars on some mercantile house in Mazatlan.

Second. On my part I bind myself to place in said port, within six months after leaving it, fifty quintals of quicksilver, at the rate of one hundred dollars each, which I will send from the first taken out, with absolute preference over every other engagement.

Third. The junta will order that there be placed at my disposition, before leaving the capital, the eight iron retorts which it has in its office, and all the quicksilver flasks which can be found in the negotiation of Tasco which are fit for use; and lastly, it will deliver to Señor Don Tomas Ramon del Moral, my attorney, the sums to pay for the retortas, cylinders, and other kinds of small apparatus which may be ordered to be made for the negotiation, to the amount of one thousand dollars.

Fourth. I will receive the retorts of the junta at cost price, and the flasks which I may select at two dollars apiece, agreeably with their valuation.

Fifth. The ascertained value of said retorts and flasks, and that of the sums which may be delivered to Señor Moral, I will repay in the term of one year from this agreement; and also the premium on the draft on Mazatlan in quicksilver placed in said port, at the price of one hundred dollars the quintal; but if the junta should wish to take one or more "acciones" in the mine, it shall be left as a part payment of the sum, corresponding to one or more "barras."

Sixth. While the company is being formed, during the period of one year counted from the date on which this agreement shall

be approved, and the five thousand dollars spoken of in the first proposition being paid, I will give the preference to the junta in the sale of the quicksilver placed in Mazatlan, at the rate of one hundred dollars the quintal.

Seventh. The junta shall represent to the supreme government the necessity of approving the possession which has been given me of the mine by the local authorities of Californias, in the same terms as those which I now hold it.

Eighth. It shall also represent the advantage of there being granted to me, as a colonist, two square leagues upon the land of my mining possession, with the object of being able to use the wood for my burnings.

Ninth. For the compliance of this contract, I pledge the mine itself, and all its appurtenances.

The subscriber submits this request to the deliberation of the junta, which, if accepted, may be made into a formal contract, and made legal in the most proper manner.

God and liberty.

Mexico, May 12th, 1846.

ANDRES CASTILLERO.

Copy. Mexico, April 23, 1850.

O. MONASTERIO.

Most Excellent Sir:

Having reported to his excellency the president ad interim of the republic, your excellency's note of the 14th inst., with which you were pleased to transmit, with a recommendation, the petition of Señor Don Andreas Castillero, for the encouragement of the quicksilver mine which he has discovered in the mission of Santa Clara, in Upper California, his excellency has been pleased to approve, in all its parts, the agreement made with that individual, in order to commence the extraction of said mineral, and on this day the corresponding communication has been made to the minister of exterior relations and government to issue the proper orders respecting that which is contained in the eighth proposition for the grant of lands in that department.

I repeat to your excellency the assurances, &c.

God and liberty.

Mexico, May 20, 1846.

BECERRA.

To his Excellency Don VICENTE SEGURA,
President of the Junta for the Encouragement of Mining.

The foregoing was communicated to this ministry of relations, saying:

"And I have the honor to enclose it to your excellency, to the end that, with respect to the petition of Señor Castillero, to which

his excellency the president ad interim has thought proper to accede, that there be granted him, as a colonist, two square leagues upon the lands of his mining possession. Your excellency will please to issue the orders corresponding.

I repeat to your excellency, &c.

Date as above.

BECERRA.

To his Excellency the Minister of Exterior Relations and Government.

Copy. Mexico, April 23, 1850.

O. MONASTERIO.

Exhibit "E" to Petition. Exhibit "C," (P. L.,) to Deposition of J. M. Lafragua.

Ministerio de Relaciones Esteriores, Gobernacion y Politica.

Ex'mo Señor: El E. é Y. S. ministro de justicia en oficio de 20 del corriente, me dice lo que copio.

Es. S.: Hoy digo al E. S. D. Vicente Segura, presidente de la junta de fomento de mineria lo sieguiente:

E. S. habiendo dado cuenta al E. S. presidiente interino con la nota de V. E., de 14 del presente a que sirvio acompañarme, con recomendacion, la solicitud del S. D. Andres Castillero para el fomento de la mina de azogue que ha descubierto en la mision de Santa Clara, en la Alta California; se ha servido S. E. aprobar en todas sus partes el convenio celebrado con dicho individuo para principiar la explotation di dicho mineral, y con esta fecha se hace la comunicacion que corresponde al ministerio de relaciones esteriores y gobernacion, para que libre las ordenes oportunas por lo respectivo a lo que contiene la 8a proposicion, relativa a la concesion de terrenos en a quel departmento.

Y tengo el honor de insertarlo a V. E. a fin de que por lo respectivo a la solicitud del S. Castillero, a que ha tenido a bien acceder el E. S. presidente interuo sobre que como colono se le conceda dos sitos de ganado mayor, sobre el terreno de su posesion minera, se sirva, V. E. librar las ordenes de que se trata.

Reitere a V. E., &a.

Y lo trascribo a V. E. para que con arreglo a lo que prevengan las leys y disposiciones sobre colonizacion, ponga al S. Castillero, en posesion de los dos sitos que se mencionan.

God and liberty.

Mexico, Mayo 23, de 1846.

CASTILLO LANZAS.

E. S. Gobernador del Departmento de Californias.

Exhibit "F" to Petition, being a translation to Exhibit "C" (P. L.) to the Deposition of J. M. Lafragua.

Ministry of Exterior Relations, Government and Police.

MOST EXCELLENT SIR: His excellency, the illustrious minister of justice, in an official communication of the 20th inst., says to me that which I copy:

"EXCELLENT SIR: I to-day say to his excellency, Don Vicente Segura, president of the junta for the encouragement of mining, that which follows:

"MOST EXCELLENT SIR: Having reported to his excellency the president ad interim the note of your excellency of the 14th inst., with which you were pleased to transmit, with a recommendation, the petition of Señor Don Andres Castillero, for the encouragement of the quicksilver mine which he has discovered in the mission of Santa Clara, in Upper California, his excellency has been pleased to approve in all its parts the agreement made with that person to commence the exploration of that mine, and on this date the corresponding communication is made to the minister of exterior relations and government, that it may issue the proper orders relative to what is contained in the 8th proposition, with respect to the granting of lands in that department.

"And I have the honor to enclose it to your excellency, to the end that, with respect to the petition of Señor Castillero, to which his excellency, the president ad interim, has thought proper to accede, that as a colonist there be granted to him two square leagues upon the land of his mining possession. Your excellency will be pleased to issue the orders corresponding.

I repeat to your excellency, &c."

Wherefore I transcribe it to your excellency, in order that in conformity with what is prescribed by the laws and dispositions upon colonization, you may put Señor Castillero in possession of the two square leagues which are mentioned. God and liberty.

Mexico, May 23, 1846.

CASTILLO LANZAS.

To His Excellency the GOVERNOR
of the Department of Californias.

Exhibit "B" (P. L.) to the Deposition of J. M. Lafragua.

MAY 20, DE 1846.

Se concede en los terminos que se propone; por lo tocante al terrino, librese la orden correspondente al ministro de relaciones para las providencias de su resorte, en el concepto de que el supremo gobierno, este anuente a la solicitud.

(Signed with the rubric of the minister of justice.)

Translation of the foregoing.

MAY 20*th*, 1846.

Granted in the terms which are proposed; and with respect to the land, let the corresponding order issue to the minister of relations for the proper measures of his office, with the understanding that the supreme government accedes to the petition.

The plaintiff objected to the reading of the same in evidence as incompetent to prove any right or title to said mine or land; and he objected specially to the answers of Lafragua to the 7th, 8th, 10th, 11th, and 13th interrogatories, as being matters of opinion and not of fact; but the court overruled these objections, and permitted the same to be read in evidence, which was done, and the plaintiff then and there immediately excepted, and the exception was allowed. It was proved on behalf of defendants that some time prior to the commencement of this action, the defendants, Walkinshaw and Forbes, had received from one or more of the parties to said contract of partnership with Castillero, formal conveyance of their alleged shares or interest in said mine and pertenencia, and that the defendant, Forbes, had conveyed his interest therein to the defendant, Barron.

The defendants also introduced and read in evidence a deed from said Castillero to Frederick Billings, one of the attorneys for the defendants, which was transmitted from Mexico, and received by said Billings pending the trial; also a deed from said Billings to said defendant, Barron, which deeds are in words and figures following, viz:

This indenture, made the second day of October, in the year of our Lord one thousand eight hundred and fifty-six, between Andreas Castillero, formerly of Upper California, and now of the State of Mexico, in the Republic of Mexico, party of the first part, and Frederick Billings, of San Francisco, in the State of California, and United States of America, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and other good and valuable considerations him moving thereunto, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all that tract of land and mine called the land and mine of New Almaden, (formerly called "Santa Clara,") lying and situate in the county of Santa Clara, in the State of California, being the mining right acquired by de-

nouncement and registry of discovery, and by the possession and grant of the same, and of three thousand varas of land, measured in every direction from the mouth of the mine, given and made by Antonio Maria Pico, first alcalde, to the party of the first part, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and forty-five, and subsequently approved and confirmed by the junta de mineria, and the president of Mexico, and the tract of two square leagues of land in a square form, the opposite sides of which lie north, south, east, and west, respectively, in the middle of which is situated the mouth of said mine, being the same land granted to the party of the first part by the president of Mexico on the twentieth of May, in the year of our Lord one thousand eight hundred and forty-six, the title, with order of possession of which, was issued by the minister of relations on the twenty-third of May, in the year of our Lord one thousand eight hundred and forty-six, and signed by Castillo Lanzas, minister of said department, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said *of the said* party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to his assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) ANDREAS CASTILLERO. [SEAL.]

Signed, sealed, and delivered in presence of—
EUSTACE H. BARRON,
SAM'L L. DENISON.

No. 207.

CONSULATE OF THE UNITED STATES OF AMERICA
For the City of Mexico, ss.

On this second day of October, in the year of our Lord one thousand eight hundred and fifty-six, before me, John Black, United States consul for the city of Mexico, personally appeared Andreas Castillero, known to me to be the individual described in, and who executed the foregoing conveyance, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my

official seal, in the city of Mexico aforesaid, the day and year first above written.

Register H, folio 182.

(Signed) JOHN BLACK, [SEAL.]
U. S. Consul.

Fees, $2 00.

This indenture, made the eighteenth day of November, in the year of our Lord one thousand eight hundred and fifty-six, between Frederick Billings, of the city of San Francisco, in the State of California, party of the first part, and William E. Barron, of said city of San Francisco, party of the second part, witnesseth: That whereas Andres Castillero, formerly of Upper California, and now of the Republic of Mexico, became the owner of the quicksilver mine of New Almaden, (formerly called "Santa Clara,") lying and situate in the county of Santa Clara, by denouncement and registry of discovery, and by receiving the judicial possession and grant of the same, and of three thousand varas of land measured in every direction from the mouth of said mine, given and made by Antonio Maria Pico, first alcalde, to the said Andres Castillero, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and forty-five; and whereas the president of Mexico, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-six, granted to said Andres Castillero, for the use of said mine, the tract of two square leagues of land in a square form, the opposite sides of which lie north, south, east and west, respectively, in the middle of which is situated the mouth of said mine, the document of title and order of possession of which said land was issued to said Castillero by Castillo Lanzas, minister of relations, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and forty-six; and whereas, by a writing of partnership, signed by the said Andres Castillero on the second day of November, in the year of our Lord one thousand eight hundred and forty-five, with José Castro, Secundino Robles, and Teodoro Robles and Friar José M. del R. S. del Real, the said Secundino and Teodoro Robles were made partners and owners in said mine of four barras, or one-sixth part thereof; and whereas the said Secundino and Teodoro Robles, on the fourteenth day of September, in the year of our Lord one thousand eight hundred and forty-seven, sold and conveyed two of the said four barras or one twelfth part of said mine to James Alexander Forbes; and whereas the said James Alexander Forbes, on the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-five, sold and conveyed to the party of the second part one barra or one twenty-fourth part of said mine and lands; and whereas the said Andres Castillero, on the second day of October, in the year of our Lord one thousand eight hundred and fifty-six, sold and con-

veyed to the party of the first part all his right, title, interest, estate, property, possession, claim and demand in and to the said mine of New Almaden, and the said two leagues of land so granted by the president of Mexico: Now, therefore, the said party of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and other goods and valuable considerations him moving thereunto, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, one undivided twenty-fourth part of all that tract of land and mine called the land and mine of New Almaden, (formerly called "Santa Clara,") lying and situate in the county of Santa Clara, in the State of California, being the mining right acquired by denouncement and registry of discovery, and by the possession and grant of the same, and of three thousand varas of land, measured in every direction from the mouth of the mine, given and made by Antonio Maria Pico, first alcalde, to the said Andres Castill*as*, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and forty-five, and subsequently approved and confirmed by the junta de mineria and the president of Mexico, and the tract of two square leagues of land in a square form, the opposite sides of which lie north, south, east, and west, respectively, in the middle of which is situate the mouth of the said mine, being the same land granted to said Andres Castillero by the president of Mexico on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-six, the title, with order of possession of which, was issued by the minister of relations on the twenty-third day of May, in the year of our Lord one thousand eight hundred and forty-six, and signed by Castillo Lanzas, minister of said department of relations, together with all and singular the tenements, hereditaments and appurtenances belonging or in any way appertaining to the said one undivided twenty-fourth part of said mine and lands, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part and to his assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) FREDERIC BILLINGS. [L. S.]

Signed, sealed, and delivered in presence of—

STATE OF CALIFORNIA,
City and County of San Francisco, ss.

On this eighteenth day of November, A. D. one thousand eight hundred and fifty-six, before me, J. R. West, a notary public in and for said county, personally appeared Frederick Billings, to me personally known to be the individual described in and who executed the annexed instrument, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

[L. S.] In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

(Signed) J. R. WEST,
Notary Public.

They also introduced and read in evidence the transcript of a judgment and proceedings in the 3d district court of the State for the county of Santa Clara, and a deed from the sheriff of said county to Robert Walkinshaw, in the words and figures following, viz:

No. 35.

Be it remembered, that heretofore, to wit, on the 3d day of September, A. D. 1850, there was filed in the district court of the 3d judicial district of the State of California, in and for the county of Santa Clara, a complaint, in the words and figures following, to wit:

State of California—August Term, 1850, District Court for the county of Santa Clara.

MAREIN FLORES
vs.
SANTIAGO BERREYESA.

To the Hon'ble the District Court within and for the 3d judicial district.

Your petitioner, by his attorney, states that he is a resident of the county of Santa Clara, and that the defendant, who also resides in said county, is justly indebted to your petitioner in the sum of 350 dollars, by promissory note in the words and figures following, to wit:

$350 00.

Thirty days after date, for value received, I promise to pay to Martin Flores, or bearer, three hundred and fifty dollars, at H. C. Smith's store, San José Mission, January 30th, 1850.

SANTIAGO BERREYESA.

Witness: H. C. SMITH.

And yet the said defendant, disregarding his said promise, has

failed to pay the same, wherefore he brings this suit and prays judgment for his said debt, together with all costs and damages, &c.

J. W. REDMAN,
Att'y for Pl'ff.

Filed Sept. 3d, 1850.

H. C. MELONE, *Clerk.*

STATE OF CALIFORNIA,
County of Santa Clara.

The People of the State of California to Santiago Berreyesa, greeting:

You are hereby commanded to be and appear, at any time within ten days after this writ shall have been served on you, before the district court of the county of Santa Clara, to be held at the court-house in the city of San José, on the fourth Monday in August, A. D. 1850, to answer the complaint of Martin Flores, or in default thereof, the court will proceed as to justice shall appertain.

Given under my hand and private seal, there being no seal of office yet provided, at office, the 3d day of September, A. D. 1850.

[L. S.]

H. C. MELONE, *Clerk.*

And on the back of the foregoing document is the following endorsement, to wit:

Came into my hand this 3d day of September, 1850.

JOHN YONTZ, *Sheriff.*

Served by leaving a copy of the summons, also a copy of the complaint, at the house of Santiago Barralsio, with a member of his family, a man over the age of 21 years.

JAS. C. McCLELLAN,
Dep'ty Sheriff.

Sept. 4, 1850.

MARTIN FLORES
vs.
SANTIAGO BERREYESA. } Debt.

In this cause comes the plaintiff, by his attorney, and the defendant still failing to appear and answer the action, and it appearing to the satisfaction of the court that the said defendant has been duly served personally with process, and having previously made default herein, and the said plaintiff having introduced proof of his said demand, the court finds for plaintiff the sum of three hundred and seventy-six dollars and twenty-five cents debt, and damages and costs. It is therefore considered and adjudged by the court that the said plaintiff do recover of the said defendant the said sum of three hundred and seventy-six dollars and twenty-five cents debt, and damages, with interest thereon at the rate of twelve per

cent. per annum from rendition of judgment until paid, together with all costs and charges in this behalf expended, and that execution issue therefor.

Which said judgment was rendered by the hon. judge of the third judicial district, at the city of San José, on the 17th day of September, A. D. 1850.

JOHN H. WATSON, *Judge.*

On the foregoing judgment there was issued out of said district court, on the 25th day of September, A. D. 1850, an execution in the words and figures following, to wit:

STATE OF CALIFORNIA,
County of California.

To The People of the State of California to the Sheriff of Santa Clara County, greeting:

Whereas judgment was rendered on the 17th day of September, A. D. 1850, against Santiago Berreyesa, and in favor of Martin Flores, for the sum of three hundred and seventy-six dollars and twenty-five , debt and damages, with costs, these are therefore to command you that of personal property of goods and chattels of the said Santiago Berreyesa you cause to be made by distress and sale the said sum of three hundred and seventy-six dollars debt and damages, with interest thereon at the rate of twelve per cent. per annum from rendition of judgment until paid, and twenty-five dollars and fifty cents costs of suit, together with all costs accruing under this writ; and if there be not sufficient personal property found to satisfy said debt, interest, and costs, then that you levy the same on the real estate of lands and tenements of the said Santiago Berreyesa as will be sufficient to satisfy the residue; and that you make due return of this writ in forty-five days from the date hereof.

Witness Hon. John H. Watson, judge of the third judicial district, with my private seal, there being no official seal yet provided, at office, this 25th day of September, A. D. 1850.
[L. S.]
Attest: H. C. MELONE, *Clerk.*

And on the back of the foregoing document is the following endorsement, to wit:

Came into my hands this 26th day of Sept., 1850. John Yontz, Sheriff. Served on $\frac{1}{2}\frac{1}{6}$ part the undivided interest of Santiago Barreyesa, in the rancho known as the Barralesa ranch, at or near the Almaden mines, in Santa Clara county, Oct. 10, 1850. John Yontz, sheriff. Sale 6 Nov. Sale made for $326; Robert Walkinshaw purchaser; making on this execution $263 80, and costs paid.

JNO. YONTZ, *Sheriff.*

Nov. 6, 1850.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

I, John B. Havson, county clerk of Santa Clara county, and ex-officio clerk of the district court of the third judicial district of said State in and for caid county, do hereby certify that the foregoing pages, numbering from one to four, inclusive, contain a true, perfect, and correct copy of the complaint, summons, and endorsements thereon; judgment, execution, and endorsements thereon, and papers thereto attached, in the above entitled cause, as now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of said court, this 21st day of February, A. D. 1856.

JNO. HAVSON, *Clerk.*
By LEVI P. PECK, *Deputy.*

No. 36.

An indenture made at San José, this 6th day of November, 1850, between John Yontz, sheriff of the county of Santa Clara, of the first part, and Rob't Walkinshaw, of Santa Clara county, of the second part. Whereas judgment was rendered in the third judicial district, for the county of Santa Clara, on the 17th day of Sept'r, 1850, against Santiago Berreyesa, and in favor of Martin Flores, for the sum of three hundred and seventy-six dollars and twenty-five cents debt, and damages, with costs of suit, with interest thereon at the rate of twelve per cent. per annum from rendition of judgment until paid, upon which judgment a writ of execution issued on the 25th of September, 1850, from the clerk's office of said court, commanding me, the said sheriff, to cause to be made the said sum out of the property, goods, and chattels of said Santiago Berreyesa, by distress and sale, with twenty-five dollars and twenty-five cents costs, and costs of said writ; and whereas, by virtue of the execution aforesaid, not finding any other property of said Santiago Berreyesa, I, the said sheriff, on Oct. 10th, 1850, seized and levied on the one undivided twentieth part of the rancho de San Vicente, (being Santiago Berreyesa interest in said rancho,) and on the same day duly advertised the same to be sold at public auction to the last and highest bidder, before the court-house door at San José, on Wednesday, the 6th day of November, 1850, for the purpose of satisfying said judgment, debt, &c.; and whereas I, the said sheriff, on the 6th day of November, 1850, did offer at public auction, to the last and highest bidder, the aforesaid premises, before the court-house door at San José, and between the hours of 10 o'clock in the forenoon and sunset of same day, whereupon Robert Walkinshaw become the last and highest bidder therefor, the sum of three hundred and twenty-six dollars, and I, the said sheriff, struck off and sold the same to the said Robert Walkin-

cent. per annum from rendition of judgment until paid, together with all costs and charges in this behalf expended, and that execution issue therefor.

Which said judgment was rendered by the hon. judge of the third judicial district, at the city of San José, on the 17th day of September, A. D. 1850.

JOHN H. WATSON, *Judge.*

On the foregoing judgment there was issued out of said district court, on the 25th day of September, A. D. 1850, an execution in the words and figures following, to wit:

STATE OF CALIFORNIA,
County of California.

To The People of the State of California to the Sheriff of Santa Clara County, greeting:

Whereas judgment was rendered on the 17th day of September, A. D. 1850, against Santiago Berreyesa, and in favor of Martin Flores, for the sum of three hundred and seventy-six dollars and twenty-five , debt and damages, with costs, these are therefore to command you that of personal property of goods and chattels of the said Santiago Berreyesa you cause to be made by distress and sale the said sum of three hundred and seventy-six dollars debt and damages, with interest thereon at the rate of twelve per cent. per annum from rendition of judgment until paid, and twenty-five dollars and fifty cents costs of suit, together with all costs accruing under this writ; and if there be not sufficient personal property found to satisfy said debt, interest, and costs, then that you levy the same on the real estate of lands and tenements of the said Santiago Berreyesa as will be sufficient to satisfy the residue; and that you make due return of this writ in forty-five days from the date hereof.

Witness Hon. John H. Watson, judge of the third judicial district, with my private seal, there being no official seal yet provided, at office, this 25th day of September, A. D. 1850.

[L. S.]

Attest: H. C. MELONE, *Clerk.*

And on the back of the foregoing document is the following endorsement, to wit:

Came into my hands this 26th day of Sept., 1850. John Yontz, Sheriff. Served on $\frac{1}{2}\frac{1}{0}$ part the undivided interest of Santiago Barreyesa, in the rancho known as the Barralesa ranch, at or near the Almaden mines, in Santa Clara county, Oct. 10, 1850. John Yontz, sheriff. Sale 6 Nov. Sale made for $326; Robert Walkinshaw purchaser; making on this execution $263 80, and costs paid.

JNO. YONTZ, *Sheriff.*

Nov. 6, 1850.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

I, John B. Havson, county clerk of Santa Clara county, and ex-officio clerk of the district court of the third judicial district of said State in and for caid county, do hereby certify that the foregoing pages, numbering from one to four, inclusive, contain a true, perfect, and correct copy of the complaint, summons, and endorsements thereon; judgment, execution, and endorsements thereon, and papers thereto attached, in the above entitled cause, as now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of said court, this 21st day of February, A. D. 1856.

JNO. HAVSON, *Clerk.*
By LEVI P. PECK, *Deputy.*

No. 36.

An indenture made at San José, this 6th day of November, 1850, between John Yontz, sheriff of the county of Santa Clara, of the first part, and Rob't Walkinshaw, of Santa Clara county, of the second part. Whereas judgment was rendered in the third judicial district, for the county of Santa Clara, on the 17th day of Sept'r, 1850, against Santiago Berreyesa, and in favor of Martin Flores, for the sum of three hundred and seventy-six dollars and twenty-five cents debt, and damages, with costs of suit, with interest thereon at the rate of twelve per cent. per annum from rendition of judgment until paid, upon which judgment a writ of execution issued on the 25th of September, 1850, from the clerk's office of said court, commanding me, the said sheriff, to cause to be made the said sum out of the property, goods, and chattels of said Santiago Berreyesa, by distress and sale, with twenty-five dollars and twenty-five cents costs, and costs of said writ; and whereas, by virtue of the execution aforesaid, not finding any other property of said Santiago Berreyesa, I, the said sheriff, on Oct. 10th, 1850, seized and levied on the one undivided twentieth part of the rancho de San Vicente, (being Santiago Berreyesa interest in said rancho,) and on the same day duly advertised the same to be sold at public auction to the last and highest bidder, before the court-house door at San José, on Wednesday, the 6th day of November, 1850, for the purpose of satisfying said judgment, debt, &c.; and whereas I, the said sheriff, on the 6th day of November, 1850, did offer at public auction, to the last and highest bidder, the aforesaid premises, before the court-house door at San José, and between the hours of 10 o'clock in the forenoon and sunset of same day, whereupon Robert Walkinshaw become the last and highest bidder therefor, the sum of three hundred and twenty-six dollars, and I, the said sheriff, struck off and sold the same to the said Robert Walkin-

shaw: Now this indenture witnesseth, that for the consideration aforesaid, and for the further consideration of three hundred and twenty-six dollars to me cash in hand paid by the said Robert Walkinshaw, (receipt whereof is hereby acknowledged,) the said John Yontz, sheriff, do hereby give, grant, bargain, and sell unto the said Robert Walkinshaw, his heirs and assigns, all the aforesaid property and premises, and their appurtenances, to have and to hold the same unto the said Walkinshaw, his heirs and assigns forever.

In testimony whereof, I have hereunto set my hand and seal the day and year above written.

JOHN YONTZ, [L. S.]
Sheriff of Santa Clara County.

Signed, sealed, and delivered in presence of—the erasure on page 1st made before signing—

STATE OF CALIFORNIA,
Santa Clara County.

Be it remembered, that on this, the 6th day of November, A. D. 1850, before me, personally came John Yontz, sheriff of said county, personally known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely, voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my private seal, (there being no official seal,) the date last above written.

[SEAL.]

J. T. RICHARDSON,
Recorder in and for said County.
J. FLOURNOY,
Dep. Rec.

Filed 8$\frac{2}{0}\frac{0}{0}$ o'clock p. m., 6th November, 1850.
J. T. RICHARDSON, *Rec.*

RECORDER'S OFFICE,
Santa Clara County, California.

I hereby certify that the foregoing on pages 1, 2, and 3 of this, is a full, true, and correct copy of an instrument of record in this office, recorded in book "C" of deeds, on pages 30 and 31. The word "the" erased from the 3d line from the bottom of the 2d page of this, the same having been incorrectly copied from the record.

Given under my hand and official seal, at the city of San José, [L. S.] this 11th day of September, A. D. 1856.

S. A. CLARK,
County Recorder.

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To the reading of these in evidence, the plaintiff, by his counsel, objected at the time it was offered; because, 1st, there was no personal or other service of the summons upon the defendant in any mode prescribed by law, nor did he appear either in person or by attorney in the case, and the whole proceeding was coram non judice and void; 2d, the judgment was subsequent in date to the demise of the premises, and if it possessed any validity could not affect the leasehold estate claimed by the plaintiff, but the court overruled the objection, and received the same in evidence. The defendants then introduced and read in evidence the transcript of a judgment and proceedings in another case, in the same district court. A deed by the sheriff to John F. Pyle, also one from Pyle to Walker, and one from Walker (from whom it was admitted by plaintiff, Walkinshaw had acquired a formal conveyance) to Walkinshaw, which are in the words and figures following, viz:

Be it remembered, that heretofore, to wit, on the 25th day of January, A. D. 1853, there was filed in the district court, of the 3d judicial district, of the State of California, in and for the county of Santa Clara, a complaint in the words and figures following, to wit:

In District Court, county of Santa Clara, and State of California.

N. VALENCIA
vs.
N. BERELLESA.

To the Hon. the District Court, in and for the county aforesaid.

Nicolas Valencia, a resident of the county and State aforesaid, complains of Nemacio Berreyesa, also a resident of the county and State aforesaid, that he render unto him, the said complainant, the sum of six hundred dollars, for that the said defendant heretofore, to wit, on or about the 22d day of September, 1852, at the county aforesaid, in consideration of the said sum of money above mentioned, then and there had and received by him, the said defendant, of and from him, the said complainant, at his the said defendant's special instance and request, did then and there specially promise and undertake him, the said complainant, the said sum of money to pay on the 22d day of January, 1853, as will appear from the writing obligatory, then and there signed by the said defendant, and herewith filed, and to which reference is hereby made; yet the said defendant, not regarding his said promise or undertaking as aforesaid, hath wholly refused, and still doth so refuse this said complainant the said sum of money to pay, or any part thereof. Therefore said complainant prays judgment against the said defendant for the said sum of six hundred dollars, and the further sum of fifty dollars interest, making in all the sum of six hundred and fifty dollars, as well as for the costs of this suit,

and for all such other and further relief as, in law and equity, this complaint may be entitled to; and, as in duty bound, said complainants will ever pray, &c.

J. ALEXANDER YOELL,
Pl'tff's Attorney.

Filed Jan'y 25th, 1853.

H. C. MELONE, *Clerk.*
By JNO. B. HANSON, *D. C.*

District Court of the third Judicial District.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

The people of the State of California to Nemacio Berellesa, greeting:

You are hereby summoned to appear and answer the complaint of Nicolas Falencia, plaintiff, filed in the district court of the third judicial district in and for the county and State aforesaid, within ten days after the service of this writ, exclusive of the day on which said service may be made.

Said complaint alleges that you are justly indebted to the plaintiff in the sum of six hundred dollars on a written obligation, and prays judgment against you for the said sum of six hundred dollars, and the further sum of fifty dollars interest due thereon.

And you are hereby notified that unless you answer said complaint within the time above specified, judgment by default will be rendered against you for the said sums of five hundred dollars principal debt, and the further sum of fifty dollars interest.

Given under my hand and the seal of said court at my office, this
[SEAL.] 25th day of January, A. D. 1853.

H. C. MELONE, *Clerk.*
By JNO. B. HENSON, *D. C.*

And on the back of the foregoing document the following endorsement, to wit: "Came to hand 9 o'clock a. m., Jan. 26th, 1853; served by delivering a copy of the within summons, together with a certified copy of the complaint, to N. Berreasa in person, in the county of Santa Clara, Jan. 26th, 1853.

J. W. JOHNSON, *Sheriff.*
By JAMES M. MAXEY, *D. S.*

Sheriff's fees:	Service,	3 00
	Copy,	1 50
	Mileage,	6 00
		$10 50

Expenses paid keeping horse attached, 8 00.

Ten dollars and fifty cents paid by J. A. Yoell, esq., on ac. fees of sheriff in this case for plaintiff.

J. W. JOHNSON, *Sheriff.*
By C. E. ALLEN, *Dep'y.*

Filed Jan. 28th, 1853.

H. C. MELONE, *Clerk.*
By JNO. B. HENSON, *D. C.*

In the 3d Judicial District Court, county of Santa Clara and State of California.

NEMACIO BERREYESA
ads.
NICOLAS VALENCIA.

And the said defendant, Nemacio Berreyesa, comes by his attorney and for answer says, that the said plaintiff, Nicolas Valencia, ought not to have or maintain his aforesaid action thereof against the said defendant, because he says, that heretofore, to wit, on the 12th day of October, 1852, and after the execution of the said writing obligatory set forth in the said plaintiff's declaration, he, the said plaintiff, executed and delivered to the said defendant a certain other writing obligatory, wherein it is stated among other things that the said defendant may have the term of one year to pay the said six hundred dollars set forth in said plaintiff's declaration, as will more fully appear by reference to the said last mentioned writing obligatory, which is hereunto annexed and made a part hereof, and marked A. And the said defendant further avers that the said term of one year has not yet expired, and that the said six hundred dollars, and the said fifty dollars interest, as set forth in plaintiff's said declaration, is not yet due to said plaintiff, nor any part thereof.

Wherefore the said defendant prays judgment if the plaintiff ought to have or maintain his aforesaid action, and that the same may be dismissed; that said plaintiff do pay all costs in this behalf expended, and such other costs as by law allowed, and for such other relief as the nature of the case will admit.

Frederic Hall, attorney for defdt., Nemacio Berreyesa, the defendant in the above cause, maketh oath and saith that the foregoing answer is true in substance and fact of his own knowledge.

NEMACIO BERREYESA.

Sworn to before me this 2d day of February, 1853.

FREDERIC HALL,
Notary Public.

San Vicente, 12 de Octubre de 1852, recibi de Nemacio Berreyesa la cantidad de sinco potras de su cabayada y dichos potras son por el viedito de seis sientos pesos pesos q'e eprestado a dicho s'or por

el termino de cuatro meses, y de no p'r un año a dos p'r 100, y nomas para q'e costo lo firmo p'r una monada.

NICOLAS BALENCIA.

Filed Feb'y 3d, 1853.

H. C. MELONE, *Clerk.*
By JNO. B. HENSON, *D. C.*

NICOLAS VALENCIA.
vs.
NEUANCIA BERREYESA.

Now come the parties by their attorneys, and plaintiff applies for a jury. It is therefore ordered by the court that the sheriff summon from the body of the county, but not from bystanders, twelve good and lawful men to be and appear at the court-house in the city of San José forthwith, to form a jury for the above entitled cause; and issue being joined, the sheriff returned into court the following persons, to wit: J. Clark, J. Markley, J. Hanks, N. H. Hicks, Thos. Campbell, J. F. Hancock, J. Faulkner, R. L. Bond, Thos. Davis, Geo. Hartman, F. Waring and Thomas Freer. The names being called and the persons not all answering, the parties agree to try the cause with a jury of three in lieu of twelve. Thereupon J. Clark, J. Hanks and Thomas Campbell, three good and lawful men, were duly sworn, to well and truly try the issue joined, and their verdict render according to evidence; and Pedro Bernal being sworn, the case was submitted to the jury upon the papers, who retired under charge of J. H. Geregory, a sworn bailiff, and returned into court the following verdict, to wit:

SAN JOSE, CAL'A, *Feb'y 21st*, 1853.

We, the jury, do find for the plaintiff six hundred dollars.

THOMAS CAMPBELL, *Foreman.*

It is therefore ordered by the court that the plaintiff do recover of the defendant the said sum of six hundred dollars, with interest thereon at the rate of ten per cent. per annum from rendition of judgment until paid, and for all costs and charges in this behalf laid out and expended, and that execution issue therefor.

And on the 25th day of February, A. D. 1853, there was issued out of the court aforesaid, upon the foregoing judgment, an execution, which is in the words and figures following, to wit:

District Court, of the third Judicial District.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

The People of the State of California to the Sheriff of Santa Clara county, "greeting:"

Whereas judgment was rendered in the district court of Santa

Clara county on the twenty-first day of February, A. D. 1853, against Nemacia Berreyesa and in favor of Nicolas Vallencia, for the sum of six hundred dollars debt and cost of suit, these are therefore to command you that you cause to be made by distress and sale of the attached property of the def't in your possession, if sufficient—if not, of personal property if sufficient—if not, then of the real property, lands and tenements of the defendant, Nemacia Berreyesa, the said sum of six hundred dollars debt, with interest on the debt at the rate of ten per cent. per annum from rendition of judgment until paid, and costs of suit, and all costs accruing under this writ, and make legal service and due return of this writ in thirty days from the receipt hereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the court at office this 25th day of February, A. D. 1853. [SEAL.]

H. C. MELONE, *Clerk.*
By JNO. B. HEWSON, *D. C.*

And on the back of the foregoing document were the following endorsements, to wit: Debt, $600 00; clerk's fees, $14 50; sheriff's fees, 15 00; plff's costs, 148 00; interpreter's fees, 5 00; witness, 2 25; this writ, 2 00; satisfaction, 2 00—$788 75.

H. C. MELONE, *Clerk.*
By JNO. B. HEWSON, *D. C.*

Levied on all the right, title, claim and interest of the within named defendant, Nemacia Berreyesa, in and to that tract of land in the county of Santa Clara known as the Berreyesa rancho, situated about 10 miles southwardly from the city of San José.

March 10th, 1853.

J. W. JOHNSON, *Sheriff.*
By C. E. ALLEN, *Deputy.*

The following papers were also attached to and made a part of the foregoing document, to wit:

Sheriff's Sale.

By virtue of an execution issued out of the district court, 3d judicial district, for the county of Santa Clara, to me directed, and delivered against Nemacio Berreyesa in favor of Nicolas Vallencia, for the sum of $600, together with costs, I have levied upon all the right, title, claim and interest of the said Berreyesa, in and to that tract of land in the county of Santa Clara known as the "Berreyesa rancho," situated about 10 miles south of the city of San José. Notice is hereby given that between the hours of 9 o'clock a. m. and 5 o'clock p. m., on Tuesday the 5th day of April, 1853, in front of the court-house in the city of San José, I will offer for sale

the above right, title, claim and interest of the said Berreyesa, to satisfy said execution and all costs.

J. W. JOHNSON, *Sheriff.*

March 14th, 1853.

Also, the following:

SAN JOSÉ, *April 5th*, 1853.

To the Sheriff of the county of Santa Clara: I beg leave to inform you, that I hold all the right, title, claim and interest which Nemacio Berreyesa has to the "Rancho San Vicente," or "Berreyesa Rancho," which I notice is advertised for sale this day. I purchased the same 25th January, 1849, which deed of purchase is of record in the office of the recorder of the county of Santa Clara. Will you do me the favor to give this notice on the day of sale as above advertised, that any person interested may have due notice.

ROBERT WALKINSHAW.

I hereby certify that the above notice was read by me in front of the court-house in the city of San José, on the 5th day of April, 1853, previous to the sale of the above property, in presence and within the hearing of the following named persons, to wit: William L. Smith, John M. Murphy, James A. Yoell, C. E. Allen, F. Hall and John F. Pyle, and James F. Reed.

J. W. JOHNSON, *Sheriff.*
By C. E. ALLEN, *Deputy.*

April 6, 1853.

Also the following endorsement, to wit: "This ex. satisfied April 13, 1853.

J. W. JOHNSON, *Sheriff.*
By C. E. ALLEN, *Deputy.*

Levy 5 00; personal property adv. 3 00; commissions 38 52; plaintiff's expense keeping horse as receiver 25 00; printing and fees real estate 16 00—87 52 paid.

Filed April 13th, 1853.

H. C. MELONE, *Clerk.*
By JNO. B. HEWSON, *D. C.*

STATE OF CALIFORNIA,
County of Santa Clara, ss.

I, John B. Hewson, county clerk of Santa Clara county and ex-officio clerk of the district court of the third judicial district of said State in and for said county, do hereby certify that the foregoing pages, numbering from one to nine inclusive, contain a true, perfect and correct copy of the complaint, summons, and endorsements thereon, answer, judgment, execution, and endorsements thereon and papers thereto attached, in the foregoing entitled cause, as now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 21st day of February, A. D. 1856.

[L. S.]

JN'O B. HEWSON, *Clerk.*
By LEVI P. PECK, *Deputy.*

No.

To all whom these presents shall come, I, Joseph W. Johnson, ex-Sheriff of the county of Santa Clara, State of California, send greeting:

Whereas judgment was rendered in the district court, third judicial district, for the county of Santa Clara, State aforesaid, on the 21st day of February, A. D. 1853, against Nemacia Berreyesa and in favor of Nicholas Valencia, for the sum of six hundred dollars debt, and costs of suit; and whereas also upon said judgment a writ of fieri facias was issued out of and duly certified by the clerk of said court, to the said sheriff directed and delivered, dated on the twenty-fifth day of February, A. D. 1853, commanding him that he cause to be made by distress and sale of the attached property of the defendants in his the said sheriff's possession, if sufficient; if not, of personal property, if sufficient; if not, then of the real property, lands, and tenements of the defendant, Nemacio Berreyesa, in his bailiwick, the amount of such judgment, with interest, as on reference to the said writ now of record, or on file in the said court, will more fully appear; and whereas also because sufficient personal property of the last named person in the said writ could not be found, whereof he, the said sheriff, could cause to be made the moneys specified in the said writ, he, the said sheriff, did, in obedience to the said command, levy on, take and seize, all the estate, right, title, and estate, in the interest of the said last named person, of, in, and to the lands, tenements, real estate, and premises, hereinafter particularly set forth, and did between the hours of nine o'clock a. m. and five o'clock p. m., on the 5th day of April, A. D. 1853, in front of the court-house in the city of San José, sell the said property at public vendue, he, the said sheriff, having advertised the same as the law directs, by posting three notices in three of the most public places in the township of San José, also by inserting a copy of said notice in the Santa Clara Register, a newspaper printed in the county aforesaid, said notice being printed and posted as aforesaid for twenty days at least previous to the day of sale successively, as on reference to a copy of said notice attached to the said writ now in the clerk's office, as aforesaid, will more fully appear, at which sale the said property was struck off and sold to John F. Pyle, for the sum of three hundred and five dollars, being the highest bidder, and that being the highest sum bidden for the same:

Now this indenture witnesseth, that I, Joseph W. Johnson, the

sheriff aforesaid, by virtue of said writ, and in pursuance of the notices so posted and printed as aforesaid, and of the statutes in such cases made and provided, for and in consideration of the sum of money before mentioned, to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do bargain, sell, convey, and confirm, unto the said John F. Pyle, his heirs or assigns, all the estate, right, title, claim, and interest of the said Nemacia Berreyesa, in and to that tract of land in the county of Santa Clara known as the "Berreyesa Rancho," situated about ten miles southerly from the city of San José; to have and to hold the same, his heirs and assigns forever, as fully and absolutely as I, Joseph W. Johnson, the sheriff as aforesaid, can, may or ought to, by virtue of the said writ, and of the statutes in such case made and provided, grant, bargain, sell, convey, and confirm the same upon the payment of the purchase money as above. A certificate such as is required by law was given to said purchaser, and also such certificate duly filed in the *recorder* of the county of Santa Clara, and the six months having expired without any redemption of said property having been made.

In witness whereof I, the said sheriff, have hereunto set my hand and seal at the city of San José, county and State aforesaid, this the eighth day of October, A. D. 1853.

J. W. JOHNSON, [SEAL.]
Ex officio Sheriff, and Ex-Collector, St. Clara County.

The foregoing deed is given in lieu of one of the same tenor of date of October the first, A. D. 1853.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this 21st day of July, A. D. 1854, personally appeared before me, recorder in and for said county, J. W. Johnson, ex-sheriff and collector of Santa Clara county, known to me to be the person described in and who executed the foregoing instrument of writing, and acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Given under my hand and official seal at the city of San José, the day and year last before written.

[L. S.]

S. A. CLARK,
County Recorder.

Filed (at the request of J. F. Pyle) at $5\frac{1}{10}$ o'clock p. m., July 21st, A. D. 1854.

S. A. CLARK,
Recorder.

Recorded by F. LEWIS,
Deputy.

RECORDER'S OFFICE,
County of Santa Clara, California.

I hereby certify that the foregoing, on pages 1, 2, 3, and 4, of this, is a full, true, and correct copy of an instrument of record in this office, recorded in book J of deeds, on pages 41, 42, and 43.

Given under my hand and official seal at the city of San José, this 11th day of September, A. D. 1856.

[L. S.]

S. A. CLARK,
County Recorder.

No. .

To all to whom these presents shall come, I, Joseph W. Johnson, ex-Sheriff of the county of Santa Clara, State of California, send greeting:

Whereas judgment was rendered in the district court, third judicial district, for the county of Santa Clara, State aforesaid, on the twenty-first day of February, A. D. 1853, against Nemacia Berreyesa, and in favor of Nicholas Vallencia, for the sum of six hundred dollars debt, and costs of suits; and whereas also upon said judgment a writ of fieri facias was issued out of and duly certified by the clerk of said court, to the said sheriff directed and delivered, dated on the twenty-fifth day of February, A. D. 1853, commanding him that he cause to be made, by distress and sale of the attached property of the defendant in his the said sheriff's possession, if sufficient—if not, of personal property, if sufficient; if not, then of the real property, lands, and tenements of the defendant, Nemacia Berreyesa, in his bailiwick, the amount of such judgment with interest, as on reference to the said writ, now of record or on file in the said court, will more fully appear; and whereas also, because sufficient personal property of the last named person in the said writ could not be found, whereof he, the said sheriff, could cause to be made the moneys specified in the said writ, he, the said sheriff, did, in obedience to the said command, levy on, take, and seize all the estate, right, title, and estate in interest of the said last named person, of, in, and to the lands, tenements, real estate, and premises hereinafter particularly set forth; and did, between the hours of nine o'clock a. m. and 5 o'clock p. m., on the 5th day of April, A. D. 1853, in front of the court-house, in the city of San José, sell the said property at public vendue, he, the said sheriff, having advertised the same as the law directs, by posting three notices in three of the most public places in the township of San José; also, by inserting a copy of said notice in the Santa Clara Register, a newspaper printed in the county aforesaid, said notices being posted and printed as aforesaid for twenty days at least previous to the day of sale, successively, as on reference to

a copy of said notice attached to the said writ, now in the clerk's office as aforesaid, will more fully appear;—at which sale the said property was struck off and sold to John F. Pyle, being the highest bidder, and that being the highest sum bidden for the same: Now this indenture witnesseth, that I, Joseph W. Johnson, the sheriff aforesaid, by virtue of said writ, and in pursuance of the notices so posted and printed as aforesaid, and of the statutes in such case made and provided, for and in consideration of the sums of money before mentioned to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents *do* bargained, sold, conveyed, and confirmed, *and by these presents do bargain, sell, convey, and confirm*, unto the said John F. Pyle, his heirs or assigns, all the estate, right, title, claim, and interest of the said Nemacio Berreyesa in and to that tract of land in the county of Santa Clara known as the "Berreyesa Rancho," situated about ten miles southwardly from the city of San José: to have and to hold the same, his heirs and assigns forever, as fully and absolutely as I, Joseph W. Johnson, the sheriff as aforesaid, can, may, or ought to, by virtue of the said writ and of the statutes in such case made and provided, grant, bargain, sell, convey and confirm the same, upon the payment of the purchase-money as above; a certificate, such is required by law, was given to said purchaser, and also such certificate duly filed in the recorder of the county of Santa Clara; and the six months having expired, without any redemption of said property having been made.

In witness whereof, I, the said sheriff, have hereunto set my hand and seal, at the city of San José, county and State aforesaid, this the first day of October, A. D. 1853.

The word "and" in the 35th line from the top erased before signing.

J. W. JOHNSON, [SEAL.]
Sheriff of the County of Santa Clara.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this fourteenth day of October, A. D. 1853, personally came before me, recorder in and for said county, J. W. Johnson, sheriff of Santa Clara county, who is well and personally known to me to be the person described in and who executed the foregoing instrument of writing as sheriff, and who acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein expressed.

Given under my hand and private seal, (no official seal having been yet provided,) the day and date last above written.

[SEAL.] S. A. CLARK,
County Recorder.

COUNTY OF SANTA CLARA,
July 21, 1854.

Notice is hereby given, that I have this day made and executed a duplicate of the within deed, for the reason that the date of this is previous to time for redemption of the property conveyed.

J. W. JOHNSON. [SEAL.]

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this 21st day of July, A. D. 1854, personally appeared before me, recorder in and for said county, Joseph W. Johnson, known to me to be individual described in and who executed the foregoing instrument of writing, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Given under my hand and official seal, at the city of San José, the day and year last written.

[SEAL.] S. A. CLARK,
County Recorder.

Filed for record, at request of J. F. Pyle, at $5\frac{20}{60}$ o'clock p. m., July 21st, A. D. 1854.

S. A. CLARK,
Recorder.

Recorded by— J. LEWIS, *Deputy.*

RECORDER'S OFFICE,
County of Santa Clara, California.

I hereby certify that the foregoing, on pages 1, 2, 3, 4, and 5 of this, is a full, true, and correct copy of an instrument of record in this office, recorded in book J of deeds, on pages 43 and 44.

Given under my hand and official seal, at the city of San José,
[L. S.] this 11th day of September, A. D. 1856.

S. A. CLARK,
County Recorder.

No.

Know all men by these presents, that I, John F. Pyle, of the county of Santa Clara and State of California, for and in consideration of the sum of seven hundred and fifty dollars to me paid by George T. Walker, of the county aforesaid, the receipt whereof is hereby acknowledged, have bargained, sold and quit-claimed, and by these presents do bargain, sell, and quit-claim unto the said George T. Walker and to his heirs and assigns forever, all my right, title and interest in and to the "Berreyeza Rancho," situated about ten miles southwardly from the city of San José, in the county aforesaid, said rancho being known as the San Vicente

rancho, the interest herein conveyed being the same as purchased by me at sheriff's sale on the 5th day of April, A. D. 1853, the same being then sold to satisfy a judgment against Nemacio Berreyeza and in favor of Nicolas Valencia, for the sum of six hundred dollars and costs of suit.

In witness whereof I have hereunto set my hand and seal, this 22d day of July, A. D. 1854.

JOHN F. PYLE. [SEAL.]

Witness: FREDERICK HALL.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this 22d day of July, A. D. 1854, personally came before me, recorder in and for said county, John F. Pyle, known to me to be the individual described in and who executed the foregoing instrument of writing, and acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Given under my hand and official seal, at the city of San José, the day and year last before written.

[L. S.]

S. A. CLARK,
County Recorder.

Filed for record (at request of Geo. T. Walker) at $5\frac{20}{60}$ o'clock p. m., July 22d, A. D. 1854.

S. A. CLARK, *Recorder.*

RECORDER'S OFFICE,
County of Santa Clara, California.

I hereby certify that the foregoing, on pages 1 and 2 of this, is a full, true and correct copy of an instrument of record in book I of deeds, on pages 149 and 150.

Given under my hand and official seal, at the city of San José, this 11th day of September, A. D. 1856.

[L. S.]

S. A. CLARK,
County Recorder.

No.

Know all men by these presents, that I, George T. Walker, of the county of Santa Clara and State of California, for and in consideration of the sum of five dollars to me in hand paid by Robert Walkinshaw, of the county aforesaid, the receipt whereof is hereby acknowledged, have bargained, sold and quit-claimed, and by these presents do bargain, sell, and quit-claim unto the said Robert Walkinshaw and to his heirs and assigns forever, all my right, title, and interest in and to the "Berreyeza Rancho," situate about ten miles southwardly from the city of San José, in the county aforesaid, said rancho being known also as the "San Vicente

rancho," the interest herein conveyed being the same as purchased by me from John F. Pyle, of date July twenty-second, 1854, and now on record, and the same having been conveyed to him from ex-sheriff J. W. Johnson, by deed of date eight day of October, 1853, the same being then sold to satisfy a judgment against Nemacia Berreyesa and in favor of Nicolas Valencia, for the sum of six hundred dollars and costs of suit.

In witness whereof I have hereunto set my hand and seal, this twenty-fourth day of July, A. D. 1854.

GEORGE T. WALKER. [SEAL.]

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this 24th day of July, A. D. 1854, personally appeared before me, recorder in and for said county, George T. Walker, known to me to be the individual described in and who executed the foregoing deed of conveyance, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Given under my hand and official seal, at the city of San José, the day and year last written.

[L. S.]

S. A. CLARK,
County Recorder.

Filed for record (at request of Rob't Walkinshaw) at 3½ o'clock p. m., July 24th, A. D. 1854.

S. A. CLARK, *Recorder.*

RECORDER'S OFFICE,
County of Santa Clara, California.

I hereby certify that the foregoing, on pages 1 and 2 of this, is a full, true and correct copy of an original instrument of record in this office, recorded in book H of deeds, on page 152.

Given under my hand and official seal, at the city of San José, this 11th day of September, A. D. 1856.

[L. S.]

S. A. CLARK,
County Recorder.

No. .

To all to whom these presents shall come, I, Joseph W. Johnson, ex-Sheriff of the county of Santa Clara, State of California, send greeting:

Whereas judgment was rendered in the district court, third judicial district, for the county of Santa Clara, State aforesaid, on the 21st day of February, A. D. 1853, against Nemicia Berreyesa, and in favor of Nicolas Valencia, for the sum of six hundred dollars, debt and costs of suit; and whereas, also, upon said judgment a writ of fieri facias was issued out of and duly certified by the clerk

of said court, to the said sheriff directed and delivered, dated on the twenty-fifth day of February, A. D. 1853, commanding him that he cause to be made, by distress and sale of the attached property of the defendant in his the said sheriff's possession, if sufficient; if not, of personal property, if sufficient; if not, then of the real property, lands, and tenements of the defendant, Nemacia Berreyesa, in his bailiwick, the amount of such judgment, with interest, as on reference to the said writ now of record, or on file in the said court, will more fully appear; and whereas, also, because sufficient personal property of the last named person in the said writ could not be found, whereof he, the said sheriff, could cause to be made the money specified in the said writ, he, the said sheriff, did, in obedience to the said command, levy on, take, and seize all the estate, right, title and estate in interest of the said last named person, of, in, and to the lands, tenements, real estate, and premises hereinafter particularly set forth, and did, between the hours of nine o'clock a. m. and 5 o'clock p. m., on the 5th day of April, A. D. 1853, in front of the courthouse, in the city of San José, sell the said property at public vendue, he, the said sheriff, having advertised the same as the law directs, by posting three notices in three of the most public places in the township of San José, also by inserting a copy of said notice in the Santa Clara Register, a newspaper printed in the county aforesaid, said notices being posted and printed as aforesaid, for twenty days at least previous to the day of sale, successively, as on reference to a copy of said notice attached to the said writ now in the clerk's office as aforesaid will more fully appear; at which sale the said property was struck off, and sold to John F. Pyle, for the sum of three hundred and five dollars, he, the said John F. Pyle, being the highest bidder, and that being the highest sum bidden for the same: Now, this indenture witnesseth that I, Joseph W. Johnson, the sheriff aforesaid, by virtue of such writ, and in pursuance of the notices so posted and printed as aforesaid, and of the statutes in such case made and provided, for and in consideration of the sum of money before mentioned, to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do bargain, sell, convey, and confirm unto the said John F. Pyle, his heirs or assigns, all the estate, right, title, claim, and interest of the said Nemacio Berreyesa in and to that tract of land, in the county of Santa Clara, known as the "Bereyesa Rancho," situated about ten miles southwardly from the city of San José; to have and to hold the same, his heirs and assigns, forever, as fully and absolutely as I, Joseph W. Johnson, the sheriff as aforesaid, can, may, or ought to, by virtue of the said writ, and of the statutes in such case made and provided, grant, bargain, sell, convey, and confirm the same, upon the payment of the purchase money, as above. A certificate, such is required by law, was given to

said purchaser, and also such certificate duly filed in the recorder of the county of Santa Clara, and the six months having expired without any redemption of said property having been made.

In witness whereof I, the said sheriff, have hereunto set my hand and seal, at the city of San José, county and State aforesaid, this first day of October, A. D. 1853; the word "and" in the 35th line from the top erased before signing.

J. W. JOHNSON, [SEAL.]
Sheriff of the County of Santa Clara.

Recorded at request of J. F. Pyle.

S. A. CLARK,
Recorder.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this fourteenth day of October, A. D. 1853, personally came before me, recorder in and for said county, J. W. Johnson, sheriff of Santa Clara county, who is well and personally known to me to be the person described in and who executed the foregoing instrument of writing as sheriff, and who acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein expressed.

Given under my hand and private seal (no official seal having yet been provided) the day and date last above written.

[SEAL.] S. A. CLARK,
County Recorder.

Filed for record at 4¼ o'clock *m.* m. October 14th, A. D. 1853.

S. A. CLARK,
Recorder.

Recorded by—

S. A. CLARK, *Recorder.*

RECORDER'S OFFICE,
Santa Clara County, California.

I hereby certify that the foregoing, on pages 1, 2, 3, and 4, of this, is a full, true, and correct copy of an instrument of record in this office, recorded in book F of deeds, on pages 389 and 390; the words "estate in" interlined between the 2d and 3d lines from the top of the 2d page of this, the same having been left out in copying from the record.

Given under my hand and official seal at the city of San José, [SEAL.] this 11th day of September, A. D. 1856.

S. A. CLARK,
County Recorder.

The plaintiff also objected to the introduction of these documents in evidence, on the grounds last above mentioned, the judgment having been rendered long subsequent to the demise, and insisted

upon the objection on the ground that, if admitted by the court, the plaintiff desired to introduce proof to show that the execution under which the sheriff, in his deed, professes to have made sale of the land had been satisfied, and also that the said Walkinshaw fraudulently colluded with Pyle, at the sheriff's sale, in suppressing competition amongst bidders, but the court received the evidence, refusing then to rule on its admissibility at the time, to which the plaintiff then immediately excepted, and the exception was allowed.

They further proved that the improvements made by them, and by those under whom they claim upon the premises in question, were of the value of one hundred thousand dollars; that the value of the improvements made thereon prior to 1851, and which now remain, was about ten thousand dollars; and the improvements made since that period were of the value of about ninety thousand dollars.

The defendants further offered in evidence certain original documents from the office of the surveyor general of the U. S. for Cal'a, being part of the archives of his office, derived from the archives of the Mexican government in California, which were proved to be genuine, and which with translations of the same are herewith set forth, marked respectively, &c.—

Espediente. Promovido por el ciudadano José Reyes Berreyesa en solicitud del parage nombrado la Cañada de los Capitancillos.

Espediente. Promobid. p'r ciudadano José R. Berreyesa en solicitud del parage nombrado Cañada de los Capitancillos.

Ex'mo S'r: El ciud. José R. Berreyesa, vecino del pueblo de S. José Guadalupe: ante V. E. como mas haya lugar e el derecho el permite, se presenta y dice; y ya hace el dilatade tiempo, en mas de ocho años, q. se haya vadicato en el parage nombrado. S. Vicente, Cañada de los Capitancillos; cuyo parage le fue conceidio oficialmente, p. el finado S'r gra'l D. José Figueroa, en el q'e ha subcistida, hasta la f'ha con su muy numerosa familia; y aunque a pesarde haver hecho varias instancia, de solicitud de obtener el titulo correspond'te p'a asegurar su legitima propiedad, no ha podido h'ta a hora legrar esta satisfacion; cuya demora a dado hi ya a q'e, su colindante Justo Larios haya tumbado su casa, y plantadola, en el intermedio q'e los dividia, q. hexan como coste de dos leguas, poco mas o menos con detrim'to del agua q'e le quito al ganado y lo auyento p'r esa parte; y aun sin embargo de q'e no se debe conciderar este con tanto derecho, como se lo han sugerido, varios seductores, enemigos del orden social, q'e como vieren q'e yo pretendia se partiera la diferiencia del terreno, le aconsefaron puciera su casa, en la dicha mediacion, p'd de este modo, entorpeser del todo mis intenciones. Por que si hace tres, o cuatro años, q'e se haza substituido p'r Leandro Galindo, este no hiso mas de

vender de la casa, y no el terreno, p'r q'e no se hayaba con derecho p'a ello; y sin embargo, el añda p'r vender el parage, como ya lo ba averificar: p'r donde se infiere, de q'e no lo nececita, o no tiene mayor mitres en el, yala ves so ex'mo q'e el expresado mi colindante, a usado de esta awibraricdad (como el mismo me lo digo) de poner su casa facultativam'te en el entermido, este sea el lindero q'e nos divida, si V. E. lo tiene abien; p'r q'e el tiene a donde estenderse, q'e es p'a fuera de la cañada, q'e a nadie pertenese; y yo no tengo absolutamente a donde alargarme. Mi solicitud a sido siempre de dos sitos, y a hora la hago lo mismo; q'e es decir, desde la casa de Justo Lario hasta el matadero, con todas las lomas q'e pertenecen a la d'ha cañada los derechos q'e en esta parte me pueden favorecer, son 26 años y 4 meses mas q'e servi a la patria en la carrera militar; desde soldado, h'ta sang'to en que vse. de mi licencia absoluta, sin nota ninguna como consta p'r ella. Y despues de haver sacrificado, toda mi vida sali al fin sin pagam'to ninguno, perdidos mis averes; y solam'te con once hijos de familia, q'r se hayan ectualm'to en mi comp'a y a mi sombra, y de estos casados, cuatro de ellos; y tengo el honor de acompañar a V. E. el diseño respetivo; por tanto.

A. V. E. vendidam'te suplico, se digne, tener en concideracion, toda cuanto depo espuesto y ver propicio esta mi suplicatoria de q'e le virire ve conocido.

Rancho de S. Vicente, 2 de Junio de 1842.

JOSÉ R. BERREYESA.

MONTEREY, *Junio* 6 *de* 1842.

Ynforme el juez de paz del pueblo de Sn. José.

ALVARADO.

En virtud de la orden ql. P. ese serbio ordenan me aql. se presentaran en este juzgado de mi cargo los C. C. José Reyes Berreyesa y Justo Larios presentando los docum'tos ql. acreditan las solicitudes o propiedad, sobre el terreno llamado Cañada de Capitancillos al ejecto el primedo precento el espediente ql. antecede, esposiendo tenendos reprecentacion mas, en la prefectura del distrito el segundo jue llamado, y no se presento mas si adquimi pr. Dn. Dolores Pacheco antereson mio ql. Larios habia presentado un espediente en el año 40 y se halla en d'ha prefectura se ha d'ho antes ql. Larios no se habia presentado y al tiempo de tiempo de escribir las ulumas linea as se presento; y dio lamisma razon dada pa.

DON DOLORES PACHECO.

El Sargento Reyes Berreyesa dijo esa conforme, con las superiores disposiones ql. V. E. tubiera a bien disponer pueblo de San José, Junio 11, de 1842.

ANTONIO BUELNA.

Monterey, Junio 13, de 1842.

Ynforme la perfectura con presencia de los documentos a solicitudes aque se refiere el informe del juez de paz del pueblo de Sn. José.

ALVARADO.

Ex'mo S. Gov'r de este Departam'to:

Con el mayor ciudado. se ha solicitado en el archivo de esta oficina el espediente de qe. hace mencion en su informe el S. juez de paz de Sn. José pertenec'te a D. Justo Larios y no existe; aunque si el qe. promobio el C. José R. Berreyesa, y en vista de estoy docum'tos del informe del citado juez y de la honora dez numerosa familia y buenos servicios del S. Berreyesa, la pref'a de mi cargo opina qe. pued'e concedersele el terreno que pretente y consta en el junto diceño, sirviendole de limites la casa de D. Justo Larios mas sin embargo V. E. resolbera lo qe. estime majen justicia.

Protesto a V. E. las seguridades.

Monterey, Junio 14, de 1842.

JOSÉ R. ESTRADO.

MONTEREY, *Junio* 15, *de* 1842.

Corrase trarlado alaparte de Justo Larios para que alegue cuanto crea conveniente a sus derechos justificando al mismo tiempo conforme a la ley las me ritos y servicios echos ala patria.

ALVARADO.

MONTEREY, *Ag'to* 1o, *de* 1842.

Haviendo convenido la parte de Larios y de Berreyesa estar conformes con los linderos demarcados en el diseño adfunto y en virtud de estar ocupando y cultuando el terreno este pr. algun tiempo espedase de el titulo correspondiente.

ALVARADO.

MONTEREY, 20 *de Ag'to, de* 1842.

Vista la peticion con que da principio este espediente [illegible]nformes que preseden con todo lo demarque se tubo presen[illegible]e y ver comvino declaro en conformidad a las leyes respectivas due no en propiedad al ciudadano José R. Berreyesa de una parte del parage nombrado Cañada de los Capitancillos, colindante al norte con las lomerias bajas immediatas al plan del pueblo de San José al sur con la sierra al oriente con las lomerias del Laurel, y al poniente con el rancho del ciudadano Justo Larios el cual tiene por lindero el angulo que forma el arroyo Seco, y el de los Alamitos, la falda de la loma cituada en el sentro de las cañada y la sierra. Libriese el correspond'te despacho tomese razon en el libro respectivo y diujase este esped'te a la ex'mo junta departamental para su aprobacion. El S'r Don Juan B. Alvarado, gobernador constitutional de las Californias asi lo probeyo mando y firmo.

4496

Ex'mo Señor:

Los litigantes C. C. José Berreyesa y Justo Larios han combenidoante mi su que los linderos de ambos al rumbo del E. segun demustra el diseño de Berreyesa, sea tirando vua recta desde el angulo que forma el arroyo de los Alamitos, con el Seco, rumbo al S. la falda de la loma situada en el centro de la cañada, hacia el E. y hasta llegar a la sierra de manera que segun el espresado diseño que parece mas esacto, la repetida linea biene a ser vua paralela que yo he demarcado con puntos para el conocimiento de V. E.

Con lo que han quedado aquietados y conformes.

Monterey, 16 de Junio, de 1842.

JOSÉ Y. FERNANDEZ.

[*For map see original, page* 273.]

Juan B. Alvarado, Gobernador Constitucional del Departmento de las Californias.

Por cuanto el ciudadano José Reyes Berreyesa ha pretendido para su beneficio personal y el de su familia una parte del parage nombrado Cañada de los Capitancillos; colindante al norte con las lomerias bajas inmediatas al plan del pueblo de S'n José, al sur con la sierra al Oriente con las Lomerias del Laurel y al poniente con el rancho del ciudadano Justo Larios el cual tiene por lindero el angulo que forma el arroyo Seco y el de los Alamitos rumbo al sur, la falda de la loma cituada en el sentrò de la cañada asi al este hasta llegar a la sierra practicadas prebiamente las diligencias y aberiguaciones consermentes segun lo dispuesto por leyes usando de las facultades que me son conferidas a nombre de la nacion Mejicana he benido en concederle el terreno mensionado declarandole la propiedad de el por las precentes letras sugeto a la aprobacion de la ex'ma junta departmental, y a las condiciones siguientes:

1a. Podra secarlo sin perjudicar las trabecias claminos y servitumbres, lo disfrutara libre y esclucivamente destinandolo al uso ó cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.

2a. Solicitara del juez respectivo que C. deposicion juridica en virtud de este despacho p'r el cual se demarcaran los linderos en cuyos limites pondra sunar de las mojoneras algunos arboles frutales ó cilurtras diagluna utilidad.

3a. El terreno de que se hace mencion es de un citio de ganado mayor poco mas ó menos segun explicar el diseño que corren el esped'te respectivo. El juez que diere la posecion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos que mas le combengan.

seventeen preceding and hereunto annexed pages of tracing paper, numbered from one to seventeen, inclusive, exhibit a true and accurate copy of a certain document entitled "Espediente promovido por el ciudadano José Reyes Berreyesa en solicitud del parage nombrado la Cañada de los Capitancillos, (293,)" now on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the
[L. S.] city of San Francisco, this twenty-fourth day of July, 1856.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855:

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

The plaintiff, by his counsel, objected to the evidence so offered as irrelevant and incompetent, but the court overruled the objection, and received the evidence.

Juan B. Alvarado being called by the defendants, testified that he remembered the title papers of Berreyesa; the titulo was delivered to and received by him at the time it was signed. A short time afterwards he sent it back, saying that he wanted two leagues. I told him not to send back his title; that the past was finished, but if he wanted more land to present his petition for more. Some time afterwards, he either sent or brought back his title. I found it among my private papers, and in 1848 sent it to his family. It never went into the government archives.

The testimony of Justo Larios aforesaid touching the actual location by himself and the said José R. Berreyesa of their dividing line, and the marking of the trees thereon, was objected to by the defendants at the time it was offered. The court, however, having noted the objection, and having reserved the right to rule thereon, upon more mature deliberation, did afterwards sustain the objection, and reject said testimony, to which ruling of the court the plaintiff then and there immediately excepted, and the exception was allowed.

The evidence on both sides having been closed, the counsel for the plaintiff, in the argument of the cause, presented the following

propositions of law, which he insisted should govern the decision of the court, and that they should state their rulings thereon in coming to their determination, viz:

1st. That if the court find, from the evidence, that the title papers of José Reyes Berreyesa, as set forth in this bill of exceptions, and read in evidence by the plaintiff, are genuine, then that the grant issued by the Governor of California to said Berreyesa on the 20th day of August, 1842, vested in him a legal title to a specific parcel of land, of which he could not be afterwards divested except by legal proceedings on account of some ground of forfeiture, or by a refusal of the territorial deputation and supreme government of Mexico to approve the same.

2d. That the issuance of said grant by the governor is prima facie evidence of the approval of the territorial deputation in some form satisfactory to him, and in the absence of all affirmative proof to the contrary, such approval is to be presumed to have been given.

3d. That by the grant aforesaid, if genuine, a title to and right in the land therein described passed to said Berreyesa, even though its definite validity may have been suspended for the approval of the departmental assembly or supreme government of Mexico, whereby he became invested with the right of entry and possession.

4th. If they believe from the evidence that said title papers are genuine, that the point described as the junction of the arroyo "Seco" and the arroyo "Alamitos," and the objects described as the "Pueblo Hills" and the "Sierra Azul," can be found and identified with certainty, then said grant is descriptive, and the land therein described became definitely located by its terms.

5th. That if the title papers of Berreyesa and Justo Larios, as set forth in the bill of exceptions, are genuine, and if within a few days they received their respective grants, they went on the land together, and there located their dividing line, commencing at a tree near to and north of the junction of said creeks, and running thence magnetic south 3° 6′ west through said junction across the Cañada, and the "Lomas Bajas," to the foot of the "Sierra Azul," as and for the dividing line described in their respective grants, and indicated on the Berreyesa diseño by the dotted line; that they marked the trees along said line, and ever afterwards acquiesced in it as their true dividing line; that such line so located by them corresponds with said dotted line in its general course and bearing in reference to the line of the "Pueblo Hills," the "Canada," the "Lomas Bajas," or mine ridge, and the "Sierra Azul," also the positions of mounts "Umunhum" and "Bache;" that it responds to the more certain and prominent calls appearing on said diseño; then it became the true dividing line between them; and the grant to said Berreyesa is by law regarded as applying to the land on the eastern side of, and bounded by, said line.

6th. If the aforesaid title papers are genuine, and the said Berreyesa and Justo Larios actually located and marked their said dividing line, running magnetic south 3° 6′ west, as and for the theoretical line mentioned in said title papers; that they afterwards repected and acquiesced in the same; then it is to be regarded in this action as the true western boundary line of the rancho of Berreyesa, whether it answers precisely all the calls of the grant and diseño or not.

7th. That the words "la falda de la loma situada al centro de la cañada asia el este," in the descriptive part of said grant, contain a patent ambiguity, and are to be rejected in determining the location and direction of said dividing line.

8th. If the lomita or hill in the centre of the cañada descends towards the east into the plain by a long, gentle slope, and such slope or descent presents no definite or certain point, then it must yield as a landmark to other objects and calls which are more certain. But if amongst the various calls in said diseño and grant no one is found to be more certain than another, and they are too repugnant to be reconciled, and the line practically located by Berreyesa and Larios is to be disregarded, then a line extending from the foot of the "Pueblo Hills," through the junction of the creeks aforesaid, magnetic south to the "Sierra Azul," is by law determined to be the true dividing line of said two ranchos.

9th. That if the quantity of land described in said grant to Berreyesa be less than two square leagues, then the whole passed to him by said grant.

10th. If, by the terms of said grant, it is to be regarded as limited to one league of land only, then such league is to be described on the eastern side of said dividing line, so as to extend from the "Pueblo Hills" on the north to the "Sierra Azul" on the south, and from said dividing line on the west so far towards the east as to include one league.

11th. If before and at the time of the issuance of said grant to Berreyesa, and under the written permission of the government above mentioned, he entered into possession of said lands, built and occupied houses thereon, cultivated portions, and his cattle grazed all over it, and if no one else had or occupied the same, or any part thereof, adversely to him, then he is to be regarded as having been lawfully seized or possessed in fact to the extent of the boundaries of the land so granted, and such lawful seizure or possession in fact constitutes such a right of entry in him, or in any one holding under him, as to authorize a recovery in ejectment against any one else having no valid title thereto.

12th. That the proceedings had before Antonio Maria Pico, alcalde of the pueblo of San José, as set forth in the certificate of possession and papers therewith connected, and those had in Mexico, as set forth in the depositions of Lafragua and the papers accom-

panying the same, did not rest in Castillero any interest in or title to said mine or land as against the said Berreyesa, or any one holding under him.

13th. That by the demise of the premises aforesaid and the assignment to the plaintiff, if genuine, he thereby acquired the right of recovery, for and during the term as the same originally vested in said Berreyesa, or in his widow and heirs; and that if the plaintiff thereby acquired the right of entry upon the demanded premises, on the 12th day of September, 1855, he is also entitled to recover *mense* profits of the defendants Walkinshaw and Barron, from that time to the time of this trial, to the extent as alleged and proved by him.

14th. That by the documents read in evidence on the part of the defendants as hereinbefore mentioned, and the proceedings therein mentioned, neither Castillero nor his associates, assigns, or vendees, acquired or held any valid right or title to said mine or lands as against the said Berreyesa, or those holding under him; that the entry thereon made and possession thereof taken by the defendants were tortious; that an entry made by one under a mere claim or color of title, he having no valid right upon the possession of another, is a trespass, and not the less so because such entry is made under some claim or color of title.

15th. If Castillero and those claiming through him did in fact acquire any right or title to said mine, and the mining pertenencia, under and by virtue of the mining laws of Mexico, the tenure by which they held the same was severed by the cession of the Territory of Upper California to the United States, and the consequent loss of Mexican sovereignty thereon.

The court, however, declared that they considered that this case was to be decided on the objection made on the trial by the defendants to the sufficiency of the plaintiff's title, and which was reserved for subsequent decision under an argument between the parties, in open court; each party should have as full benefit of his exceptions to the rulings of the court as if the objections were decided at the time they were made; and thereupon declined to entertain or take into consideration the facts set forth and the legal propositions advanced by plaintiff's counsel, but ordered judgment to be entered for the defendants.

The plaintiff by his counsel then called the attention of the court to the course of practice suggested or prescribed by the Supreme Court of the United States in The United States vs. King et al., 7 How., 846; in Weems vs. George et al., 13 How., 197; and in Guild vs. Martin, 18 How., 135, for the government of the circuit court in deciding cases at law where the court tries the facts without a jury. He also called their attention to the 56 rule, prescribed and published by this court for the regulation of its

practice in common law cases, which is in the words and figures following:

"In all cases not provided for in these rules or by the acts of the Congress of the United States, the practice and forms of remedy in this court shall conform, as far as practicable, to those prescribed for the courts of this State by an act of the legislature, passed April 29th, 1851, entitled "An act to regulate proceedings in the courts of this State;" and another act of said legislature, amendatory thereof, passed May 15th, 1854, provided that nothing in either of said acts shall be so construed as to authorize the enforcement of a merely equitable right by any action or proceeding on the common law side of this court."

And thereupon moved the court to furnish a finding of the facts specially, as distinct from conclusions of law, or to render a special verdict of the facts established by the evidence, in order that the decision of this court might be reviewed on a writ of error; but the court refused to render a special verdict or finding of the facts proved, (the counsel for the defendants having objected thereto,) to which ruling and refusal of the court the plaintiff, by his counsel, then and there immediately excepted; and the exception was allowed. And he thereupon tendered this his bill of exceptions, which is signed, sealed, enrolled, and made part of the record in this case.

M. HALL McALLISTER, [SEAL.]
Judge.

OGDEN HOFFMAN, [SEAL.]
Dist. Judge.

Filed April 20th, 1857.

CUTLER McALLISTER, *D. C.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States for the districts of California, holden in and for the northern district of said State, greeting:

Because, that in the record and proceedings, and also in the of judgment in a suit before you, or some of you, between James Tobin, plaintiff, and Robert Walkinshaw, James A. Forbes, and William E. Barron, defendants, in a plea of trespass in ejectment, manifest error has intervened, to the great damage of the said plaintiff, as in his complaint has been stated; and as it is just and proper that the error, if there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seal, you do directly and openly send the record and proceedings in the suit aforesaid, with all things concerning them, and this writ, so that you have

the same before the Chief Justice and the associate Justices of the Supreme Court of the United States on the first Monday of December next, at Washington, being the present seat of the national government, that the record and proceedings aforesaid being inspected, they cause to be done thereon what ought to be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court aforesaid, this twentieth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the 81st.

GEO. PEN JOHNSTON,
Clerk.

Pr. CUTLER McALLISTER, *D. C.*

Filed April 20th, 1857.

CUTLER McALLISTER, *D. C.*

UNITED STATES OF AMERICA, *ss.*

To Robert Walkinshaw, James A. Forbes and William E. Barron, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the districts of California, northern district, wherein James Tobin is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. H. McAllister, one of the judges of the circuit court of the United States for the districts of California, northern district, this 20th day of April, in the year of our Lord 1857.

M. HALL McALLISTER,
Judge Cir. Court U. S., Dists. of Cal'a.

Filed April 20, 1857.

CUTLER McALLISTER, *D. C.*

I, Geo. Pen Johnston, clerk of the United States circuit court for the districts of California, do hereby certify the foregoing transcript, from page 1 to 295 inclusive, to be a true, full and correct copy of the original papers on file and of record in the above cause, in my office.

In witness whereof I have hereunto set my hand and caused to be affixed the seal of said court, this 3d day of October, A. D. 1857.

[L. S.]

GEO. PEN JOHNSTON,
Pr. CUTLER McALLISTER, *D. C.*

[*Here follow* 3 *maps—see original.*]

Filed 30th November, 1858.

45-07

SUPREME COURT OF THE UNITED STATES.

No. 146.

THE BANK OF PITTSBURGH, PL'FF IN ERROR,

vs.

JOHN S. NEAL AND REUBEN E. NEAL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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GIDEON, print.

Pleas of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued and holden at Indianapolis, in said district, on the seventeenth day of May, in the year of our Lord eighteen hundred and fifty-eight, that being the first judicial day of the May term of said court for the year 1858, aforesaid: present the Hon. Elisha M. Huntington, district judge of the United States for the district of Indiana.

THE BANK OF PITTSBURGH
vs.
JOHN S. NEAL and REUBEN E. NEAL.

Be it remembered, that heretofore, to wit, on the ninth day of April, in the year of our Lord eighteen hundred and fifty-eight, the plaintiff, by her attorney, C. E. Walker, esq., filed in the clerk's office of said court her certain declaration against the defendant in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Indiana.

In the United States Circuit Court for the circuit and district of Indiana—May Term, 1858.

The Bank of Pittsburgh, a corporation incorporated by an act of the general assembly of the State of Pennsylvania, and having her office and place of business in the city of Pittsburgh and State of Pennsylvania, of which State of Pennsylvania all the stockholders thereof are citizens, plaintiff, complains by Charles E. Walker, her attorney, of John S. Neal & Reuben E. Neal, partners in trade under the firm name and style of J. S. & R. E. Neal, citizens of the State of Indiana, residing in Jefferson county, defendants, in an action of assumpsit, and says: for that whereas, heretofore, to wit, at Pittsburgh, to wit, at said State of Pennsylvania, on the 18th day of August, 1857, Mess. L. O. Reynolds & Son, citizens of said State of Pennsylvania, according to the custom of merchants, drew their certain bill of exchange of that date, upon and directed to the said defendants by their firm name and description of Messrs. J. S. & R. E. Neal, at Madison, Indiana, and thereby requested them, the said defendants, four months after date of this second of exchange (first unpaid,) to pay to the order of L. O. Reynolds, a citizen of said State of Pennsylvania, at the Ohio Life Insurance and Trust Company, at Cincinnati, in the State of Ohio, by the name and description of, "at the Ohio Life Ins. and Trust Co., Cin., Ohio," two thousand one hundred and sixty-eight dollars for value received, and without

any relief from valuation or appraisement laws; and then and there delivered said bill of exchange to said L. O. Reynolds; and afterwards, to wit, on the day and year aforesaid, the said L. O. Reynolds endorsed said bill of exchange to Messrs. L. Wilmarth & Co., citizens of said State of Pennsylvania, and delivered the same to them, and thereby ordered said money to be paid to them.

And afterwards, to wit, on the day and year aforesaid, the said Messrs. L. Wilmarth & Co., at Pittsburgh, aforesaid, for value received, endorsed and delivered said bill of exchange to the plaintiff, and thereby ordered said money to be paid to her.

And afterwards, to wit, on the day and year aforesaid, at Madison, to wit, at the circuit aforesaid, the said defendants, by their said firm name and description of J. S. & R. E. Neal, accepted said second bill of exchange, and thereby became liable to pay to the plaintiff the money therein specified, according to the tenor and effect thereof; and being so liable, afterwards, to wit, on the day and year aforesaid, in consideration thereof, promised the plaintiff to pay her said money, acccrding to the tenor and effect thereof.

And afterwards, to wit, on the day of the maturity of said bill of exchange, to wit, on the 21st day of December, 1857, the plaintiff caused said second bill of exchange to be duly presented for payment at said Ohio Life Insurance and Trust Company, at Cincinnati, in the State of Ohio, and payment thereof demanded, which was then and there refused, and the same was then and there duly protested for non-payment, and the plaintiff was compelled to pay one dollar and ten cents costs for protest.

The plaintiff avers, that the time for the payment of the said money in said bill of exchange specified has elapsed, and that the same remains wholly unpaid, whereby an action hath accrued to the plaintiff, to have and demand said sum of money, with five per cent. damages, and interest thereon, from said defendants.

2d. And for that whereas, also, heretofore, to wit, on the 1st day of August, 1857, at Pittsburgh, in the State of Pennsylvania, to wit, at the circuit and district aforesaid, the said Messrs. L. O. Reynolds & Son, citizens of said State of Pennsylvania, according to the custom of merchants, drew their certain other bill of exchange of that date, upon and directed to the said defendants, by their said firm name and description, of Messrs. J. S. & R. E. Neal, Cincinnati, Ohio, and thereby requested them four months after the date of this second of exchange, (first unpaid,) to pay to the order of L. O. Reynolds, a citizen of said State of Pennsylvania, thirteen hundred and fifty dollars, for value received, and without any relief from valuation or appraisement laws at the Ohio Life Insurance and Trust Company, at Cincinnati, in the

State of Ohio, by the name and description of "at the Ohio Life Ins. and Trust Co., Cin., O."

And afterwards, to wit, on the day and year aforesaid, at Pittsburgh aforesaid, the said L. O. Reynolds endorsed and delivered the said bill of exchange to Messrs. L. Wilmarth & Co., citizens of said State of Pennsylvania, and thereby ordered said money therein specified to be paid to them according to the tenor and effect thereof.

And afterwards, to wit, on the day and year aforesaid, the said Messrs. L. Wilmarth & Co. endorsed and delivered the said bill of exchange, for value received, to the plaintiff, and thereby ordered the money therein specified to be paid to her.

And afterwards, to wit, on the day and year aforesaid, to wit, at the circuit aforesaid, the said defendants, by their said firm name and description of J. S. & R. E. Neal, accepted the said bill of exchange, and thereby became liable to pay to the plaintiff the money therein specified, according to the tenor and effect thereof; and being so liable, afterwards, to wit, on the day and year aforesaid, in consideration thereof, promised the plaintiff to pay her said money in said bill of exchange specified, according to the tenor and effect thereof.

And afterwards, to wit, on the 4th day of December, 1857, the plaintiff caused said bill of exchange to be duly presented for payment at the said Ohio Life Insurance and Trust Company at Cincinnati, in the State of Ohio, that being the place for the payment of and the day of the maturity of said bill of exchange, and payment thereof to be duly demanded, but the same was not then and there paid, and the same was then and there duly protested for non-payment, and the plaintiff was compelled to pay one dollar and ten cents for costs of protest, &c.

The plaintiff avers that the time for the payment of said money in said last bill of exchange specified has elapsed, and the same remains wholly unpaid, whereby an action hath accrued to the plaintiff to demand and have of the said defendants said sums of money above demanded, with five per cent. damages and interest thereon.

Yet the said defendants have not, nor either of them, nor any other person, paid to the plaintiff said sums of money above demanded, or any part thereof, although often requested so to do; but so to do the defendants wholly neglect, fail, and refuse, to the damage of the said plaintiff five thousand dollars; wherefore she brings her suit, &c.

C. E. WALKER,
Att'y for Pl'ff.

I acknowledge myself security for costs in the above case of the Bank of Pittsburgh vs. Neals, this 16th day of April, 1858.

C. E. WALKER.

And therefore due process was issued by the clerk of said court, against said defendants, and delivered to the marshal of the said district of Indiana, who returned the same served on said defendants.

And afterwards, to wit, at a circuit court of the United States for the seventh judicial circuit and district of Indiana aforesaid, begun and holden at Indianapolis, in said district, on the twentieth (20th) day of May, in the year eighteen hundred and fifty-eight aforesaid—present the Honorable Elisha M. Huntington, judge of said district as aforesaid, that being the fourth judicial day of the May term of said court for the year aforesaid—come now the parties.

And thereupon, on motion by the plaintiff, leave is granted by the court to amend her declaration, which is done in the words and figures following, to wit:

In the United States Circuit Court for the district of Indiana—May Term, 1858.

THE BANK OF PITTSBUGH
vs.
JOHN S. & REUBEN E. NEAL.

Amendment to the declaration filed more than twenty days before the first day of the present term.

3d count. And for that whereas, also, heretofore, to wit, on the tenth (10th) day of July, 1857, the defendants, residing at Madison, in the State of Indiana, delivered to one Lott O. Reynolds, a citizen of the State of Pennsylvania, residing at Pittsburgh, in said State of Pennsylvania, at said Pittsburgh, their the defendants' acceptance of a first and second of exchange, being the printed form of a bill of exchange, in a set of first and second, with the unconditional acceptance of the defendants written across the face of each of said parts, and signed by them by their said firm name, and with the name of said L. O. Reynolds filled in as payee, being in blank as to date, amount, time and place for payment, and without the name of any drawer signed thereto, which said blank parts of said bill of exchange, so accepted by the defendants, they then and there delivered to the said Reynolds as their agent, to be by him filled up with a date, amount, time and place for payment, and to procure some person to sign the same as drawer thereof, and then to negotiate and sell the same at Pittsburgh aforesaid, for the use and benefit of the said defendants, and pay them the proceeds thereof. That said Reynolds being so possessed of the said first and second parts, being each so unconditionally accepted by the said defendants, and being otherwise in blank as aforesaid, he, the said L. O. Reynolds, procured Messrs. L. O. Reynolds & Son, citizens of said Pittsburgh, in the State of Pennsylvania, to sign each part thereof as drawers thereof, and filled up

the first part thereof, of the date of July 10th, 1857, for the sum of two thousand and thirty-five dollars, payable four months after date, at the branch of the State Bank of Indiana, at Madison, Indiana, addressed to the defendants at Madison, Indiana, and endorsed the same in blank, and procured Mess. L. Wilmarth & Co., citizens of Pittsburgh aforesaid, also to endorse the same in blank, and then sold and negotiated the same for a valuable consideration to the Merchants and Manufacturers' Bank of Pittsburgh aforesaid, and paid to the said defendants the whole proceeds thereof, less the exchange and interest charged by said bank on discounting the same. That afterwards, to wit, on the 18th day of August, 1857, the said L. O. Reynolds filled up the second part of said bills of exchange, so accepted on its face by the defendants, of that date, for the sum of twenty-one hundred and sixty-eight dollars, payable four months after the said date thereof, at the said Ohio Life Insurance and Trust Company at Cincinnati, Ohio, and addressed to the defendants, at Madison, Indiana, waiving benefits of the appraisement laws, thereby ing said defendants to pay (on) his order said sum of money four months after said date, and then endorsed said second part of said bill of exchange to said Messrs. L. Wilmarth & Co., and ordered said money paid to them, and procured the said Messrs. L. Wilmarth & Co. to also endorse the same to the plaintiff, and thereby ordered said money paid to her, and then negotiated, sold, and delivered the same to the said plaintiff, for value, to wit, the full amount thereof, less the usual exchange and interest for the said time of four months, which said bill had to run. That the said plaintiff took the same, and paid said Reynolds, on the check of said Wilmarth & Co., the value thereof, believing it to be the accepted part and the only accepted part of said bill of exchange, said acceptance appearing upon the face thereof, and without any knowledge or notice of there being any other accepted parts, or of the manner of filling up and transferring the same as aforesaid.

And the plaintiff saith that afterwards, to wit, on the 14th day of November, 1857, the defendants ratified and confirmed the acts of their said agent, L. O. Reynolds, in transferring said parts first and second of said bill of exchange, and promised the said Messrs. L. Wilmarth & Co., the said endorsers thereof, to accept new bills of exchange, to be drawn by said Mess. L. Wilmarth & Co., for the renewal of each of said parts, by means of all which the said defendants became, and are, liable to pay the plaintiff said sum of money in said second of exchange specified; and being so liable, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, promised the plaintiff to pay the said money in said second of exchange specified, according to the tenor and effect thereof; and afterwards, to wit, on the 21st day of December,

1857, the day said money was due, the said plaintiff caused said second of exchange to be duly presented for payment at the said place where payable, and payment thereof then and there to be demanded; but the same was not paid, and was then and there duly protested for non-payment, by means whereof an action hath accrued to the plaintiff to demand and have of the defendants said money in said second of exchange specified, with the interest and damages thereon, which is due and unpaid.

THE BANK OF PITTSBURGH
vs.
JOHN S. & REUBEN E. NEAL.

In the United States Circuit Court for the district of Indiana—May Term, 1858.

Amendment to the declaration filed more than twenty days before the first day of the present term.

4th count. And for that whereas, also, heretofore, to wit, on the 30th day of July, 1857, the defendants, residing at Madison, in the State of Indiana, delivered to one Lott O. Reynolds, a citizen of the State of Pennsylvania, residing at Pittsburgh, in said State of Pennsylvania, at said Pittsburgh, their the defendants' acceptance of a first and second of exchange, being the printed form of a bill of exchange in a set of first and second, with the unconditional acceptance of the defendants written across the face of each of said parts, and signed by them by their said firm name, and with the name of L. O. Reynolds filled in as payee, being in blank as to date, amount, time, and place for payment, and without the name of any drawer signed thereto, which said blank parts of said bill of exchange so accepted by the defendants they then and there delivered to the said Reynolds, as their agent, to be by him filled up with a date, amount, time and place for payment, and to procure some person to sign the same as drawer thereof, and then to negotiate and sell the same at Pittsburgh aforesaid.

That the said Reynolds being so possessed of the said first and second parts, being so unconditionally accepted by the said defendants, and being otherwise in blank as aforesaid, he, the said L. O. Reynolds, procured Messrs. L. O. Reynolds & Son, citizens of said Pittsburgh, in the State of Pennsylvania, to sign each part thereof as drawers thereof, and filled up the first part thereof of the date of 30th of July, 1857, for the sum of twenty-four hundred and fifty dollars, making it payable four months after date, at the Ohio Life Insurance and Trust Company, Cincinnati, in the State of Ohio, addressed to the said defendants at Madison, Indiana, and endorsed the same in blank, and procured Henry McCullough, a citizen of Pittsburgh aforesaid, also to endorse the same in blank, and then sold and negotiated the same for a valuable consideration

4575—

to the Merchants and Manufacturers' Bank of Pittsburgh aforesaid; and that afterwards, to wit, on the 1st day of August, 1857, the said L. O. Reynolds filled up the said second part of said bill of that date, and for the sum of thirteen hundred and fifty dollars, payable four months after the said date thereof at the said Ohio Life Insurance and Trust Company, at Cincinnati, Ohio, without any relief from appraisement laws, and addressed to the said defendants at Cincinnati, Ohio, and thereby requested them to pay to his order said money four months after date, and then endorsed said second part of said bill of exchange to said L. Wilmarth & Co., and ordered said money paid to them, and procured the said L. Wilmarth & Co. to endorse the same to the plaintiff, and thereby ordered said money to be paid to the plaintiff, and then negotiated, sold, and delivered the same to the said plaintiff for value, to wit, the full amount thereof, less the usual exchange and interest, for the said term of four months which said bill had to run; that the said plaintiff took the same and paid said Reynolds on the check of said Wilmarth & Co. the value thereof, believing it to be the accepted part and the only accepted part of said bill of exchange, said acceptance appearing upon the face thereof, and without any knowledge or notice of there being any other accepted part, or of the manner of filling up and transferring the same as aforesaid.

And the plaintiff saith that afterwards, to wit, on the 14th day of November, 1851, the defendants ratified and confirmed the acts of their said agent, L. O. Reynolds, in transferring said parts first and second of said bills of exchange, and promised the said Messrs. L. Wilmarth & Co., the said endorsers thereof, to accept new bills of exchange, to be drawn by said Messrs. L. Wilmarth & Co., for the renewal thereof, by means of all which the said defendants became and are liable to pay the plaintiff said sum of money in said second of exchange specified, and being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, promised the plaintiff to pay her said money in said second of exchange specified, according to the tenor and effect thereof; and afterwards, to wit, on the 4th day of December, 1857, the day said money was due, the said plaintiff caused said second of exchange to be duly presented for payment at the said place where payable, and payment thereof then and there to be demanded, but the same was not paid, and was then and there duly protested for non-payment, by means whereof an action hath accrued to the plaintiff to demand and have of the defendants said money in said second of exchange specified, with the interest and damages thereon, which is due and unpaid.

Yet the said defendants, although often requested so to do, have not paid the said plaintiff the said sums of money, or any part

thereof, but so to do have wholly failed and refused; nor hath any other person paid the same; to the damage of the plaintiff as aforesaid.

C. E. WALKER, *Att'y for Pl'ff.*

1. And the said defendants, by their attorneys, come and defend the wrong and injury, when, &c., and say that they did not undertake and promise in manner and form as the said plaintiff hath above thereof declared against them; and of this they put themselves upon the country.

2. And for a further plea in this behalf, as to said first and second counts of the declaration, the said defendants say that the said plaintiff ought not to have or maintain her aforesaid action against them, because they say, that before the making of the said supposed bill of exchange in the said two counts mentioned, to wit, on the day of June, in the year 1857, the said defendants, who then resided and still reside at the city of Madison, in the State of Indiana, to wit, at the district aforesaid, wishing to procure a loan of money upon bills of exchange, and believing that such loan might be more readily procured, and upon better terms, at the city of Pittsburgh, in the State of Pennsylvania, to wit, at the district aforesaid, made their certain acceptance, in writing, of two blank bills of exchange, in sets of two parts to each bill, each part being payable on the condition that its corresponding part was not paid; each of which bills of exchange and each part thereof was made payable to the order of said Lott O. Reynolds, by the name and description of L. O. Reynolds, but was left in blank as to the name of the drawers and the drawees, and as to date and amount, and time and place of payment, and the acceptance of the defendants was written across the face of each part thereof by their said firm name of J. S. & R. E. Neal.

Each of said blank bills of exchange was in the words and figures following, to wit:

Exchange for $———.

————————, after ———————— of this first of exchange, (second unpaid,) pay to the order of L. O. Reynolds ———————— dollars, value received, without any relief from valuation or appraisement laws.

To ——— ———. ——— ———.

Accepted: J. S. & R. E. NEAL.

Exchange for $———.

————————, after———————— of this second of exchange, (first unpaid,) pay to the order of L. O. Reynolds ———————— dollars, value received, without any relief from valuation or appraisement laws.

To ——— ———. ——— ———.

Accepted: J. S. & R. E. NEAL.

And having so accepted said two bills of exchange in blank, the said defendants afterwards, to wit, on the day and year aforesaid, at the district aforesaid, sent and delivered the same, in the form and condition aforesaid, to the said L. O. Reynolds, who then resided and still resides at said city of Pittsburgh. And they, the defendants, then and there requested said Reynolds to procure said blank bills to be perfected as bills of exchange by the signatures of the requisite parties as accommodation drawers and endorsees, and to fill up each thereof with appropriate date, and with sums not less than fifteen hundred nor more than three thousand dollars in each bill, payable at the longest period practicable, and having perfected the same as bills of exchange, to sell and negotiate the same for money and remit the proceeds to said defendants. All of which said Reynolds then and there promised and agreed with the said defendants to do.

And said defendants further aver, that afterwards, to wit, on the day of July, in the year 1857, at the district aforesaid, at the special instance and request of said Lott O. Reynolds, they made their certain acceptance in writing of two other blank bills of exchange in sets of two parts to each bill, and then and there delivered the same to said Reynolds, which two last named blank bills of exchange, when so delivered to said Reynolds, were in all respects similar to said two first named blank bills of exchange.

And said defendants then and there, at the special instance and request of said Reynolds, authorized him, said Reynolds, to perfect said two last named blanks as bills of exchange, and in reasonable amounts and with reasonable dates, at his discretion, and to procure each thereof to be sold and discounted for his own sole use and accommodation, and to retain and use the proceeds thereof for his own benefit.

And said defendants say, that after the delivery of said first two blank bills of exchange to said Reynolds, as aforesaid, to wit, on the 1st day of July, in the year 1857, at said city of Pittsburgh, to wit, at the district aforesaid, he, said Reynolds, filled up the first part of one thereof, with the date last aforesaid, and with the sum of nineteen hundred and sixty-five dollars, making it payable four months after said date, and caused said L. O. Reynolds & Son to sign it as drawers, and addressed the same to the defendants by their said firm name, and then and there sold and negotiated the same, for its value, to the Mechanics' Bank in said city of Pittsburgh, and appropriated the proceeds thereof to his own use, and wholly failed to pay over the proceeds thereof to the defendants. And they say, that afterwards, at the maturity of said bill of exchange, to wit, on the day of November, at the district aforesaid, they fully paid, satisfied, and lifted said last named bill of exchange.

And defendants further say, that after the delivery of said first two blank bills of exchange to said Reynolds, as aforesaid, to wit, on the 10th day of July, in the year 1857, at said city of Pittsburgh, to wit, at the district aforesaid, he, said Reynolds, filled up the first part of *of* the other of said two bills of exchange with the date last aforesaid, and with the sum of two thousand and thirty-five dollars, and addressed the same to said defendants, making it payable four months after said date, and caused said L. O. Reynolds & Son to sign it as drawers, and then and there sold and negotiated the same for its value to the Merchants and Manufacturers' Bank, in said city of Pittsburgh, and paid over the proceeds thereof to said defendants.

And said defendants say, that after the maturity of said last named bill of exchange, to wit, on the 2d day of January, 1858, said last named bank, as holder and owner thereof, instituted a suit thereon in the Jefferson circuit court of said State of Indiana, against these defendants as acceptors, and such proceedings were had thereon as that afterwards, to wit, at the March term, 1858, of said court, on the 23d day of March, in the year 1858, said Merchants and Manufacturers' Bank recovered a judgment in said court, against these defendants as such acceptors, for the sum of two thousand and eighty-two dollars and forty-nine cents, being the full amount of said bill of exchange, with the interest that had accrued thereon, together with costs of suit, which judgment remains in full force and unreversed.

And said defendants further say, that after the delivery of said second two blank bills of exchange to said Reynolds, as aforesaid, to wit, on the 24th day of July, in the year 1857, at said city of Pittsburgh, to wit, at the district aforesaid, he, said Reynolds, filled up the first part of one thereof with the date last aforesaid, and with the sum of twenty-seven hundred and fifty dollars, and the same to said defendants, making it payable four months after date, and caused said L. O. Reynolds & Son to sign it as drawers, and then and there sold and negotiated the same for its value to the Citizens' Bank, in said city of Pittsburgh, and appropriated the proceeds thereof to his own use.

And said defendants say, that after the maturity thereof, to wit, on the 14th day of December, in the year 1857, John Black, Michael McCullough, Caleb B. McCullough, and John J. McDermot, partners, doing business under the firm name of John Black & Co., who were then the legal holders and owners of said bill of exchange, instituted a suit thereon against these defendants as acceptors thereof, in said Jefferson circuit court of the State of Indiana, and such proceedings were had thereon, that afterwards, at the March term, 1858, of said court, to wit, on the 23d day of March, 1858, said John Black & Co. recovered a judgment in said court against these defendants as such acceptors, for the sum of

two thousand eight hundred and five dollars and seventy cents, being the full amount of said bill of exchange, with the interest that had accrued thereon, together with the costs of suit, which judgment remains in full force and unreversed.

And the defendants further say, that after the delivery of said second two bills of exchange to said Reynolds as aforesaid, to wit, on the 30th day of July, in the year 1857, at said city of Pittsburgh, to wit, at the district aforesaid, he, said Reynolds, filled up the first of the other of said two bills with the date last aforesaid, and with the sum of twenty-four hundred and fifty dollars, making it payable four months after date, and addressed the same to said defendants, and caused said L. O. Reynolds & Son to sign the same as drawers, and then and there sold and negotiated the same to said Merchants and Manufacturers' Bank of said city of Pittsburgh, in the usual course of business, for its full value, and then and there appropriated the proceeds thereof to his own use.

And the defendants say that at the several dates and times of filling up and negotiating the first part of each of said several four bills of exchange as aforesaid, the said Reynolds, without the knowledge or consent of these defendants, retained in his own possession the corresponding second part in the same form and condition in which it had been delivered to him as aforesaid, and did not either fill it up in conformity with its corresponding first part, and deliver it over therewith, or destroy it.

And the defendants say, that after the negotiation of all said several first parts of said four bills of exchange as aforesaid, the said Lott O. Reynolds, without any consent or authority whatever from the defendants, and without their knowledge, in his own name and for his own use and benefit, fraudulently filled up and perfected, in the form of bills of exchange, two of the said second parts of said four bills ot exchange, each with a different date and amount from its corresponding first part, and fraudulently negotiated and put in circulation said three (two) second parts, as distinct bills of exchange, as follows, viz:

On a certain day, to wit, on the 1st day of August, in the year 1857, at said city of Pittsburgh, to wit, in the district aforesaid, he, said L. O. Reynolds, filled up one of said two second parts, as of said last named date, and with the sum of thirteen hundred and fifty dollars, making it payable four months after date, addressed to the defendants, and caused the same to be signed by said L. O. Reynolds & Son as drawers, and then and there delivered the same to the plaintiff, which is the same supposed bill of exchange in the second count of the declaration mentioned, and not other or different.

And afterwards, to wit, on the 18th day of August, in the year 1857, at said city of Pittsburgh, to wit, at the district aforesaid, he, said L. O. Reynolds, filled up the other of said two of said

second parts of said bills of exchange, as of said last named date, and with the sum of twenty-one hundred and sixty-eight dollars, making it payable four months after date, and addressed it to said defendants, and caused the same to be signed by said L. O. Reynolds & Son as drawers, and then and there delivered the same to said plaintiff, which is the same supposed bill of exchange in said first count of the declaration mentioned, and not other or different.

And said defendants aver that they never received, or agreed to receive, any part of the proceeds of said supposed bills of exchange, or either of them, in said first and second counts of the declaration mentioned, nor did they ever receive, or agree to receive, any consideration whatever for, or any advantage whatever from said two supposed bills of exchange, or either of them.

They further aver that they do not know, and therefore cannot state, to which of said first parts of said four blank bills of exchange the said two supposed bills of exchange in said 1st and 2d counts of the declaration do or would respectively appertain; that the same were confused by said Reynolds, and cannot now be distinguished and identified.

Wherefore the defendants say that the said supposed bill of exchange in said counts mentioned are not their acceptances. And they further say, that although the said supposed bills of exchange, and said two counts mentioned, when assigned and delivered to the plaintiff, and when received by the plaintiff as aforesaid, did each purport on its face to be a "second of exchange," and to be payable only on condition that the first of exchange remained unpaid, yet the plaintiff carelessly and negligently, and contrary to the commercial usage in such cases, accepted and received the same, and each thereof, without making any inquiry whatever after or concerning the corresponding "first of exchange" therein mentioned, when, upon making such reasonable inquiry, said plaintiff might well have learned, and would have learned all the facts aforesaid. And this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain her aforesaid action against them.

3d. And for a further plea as to said second count of the declaration said defendants say, actio non; because they say that heretofore, to wit, on the 30th day of July, in the year 1857, at the district aforesaid, the said defendants residing at Madison, in said State of Indiana, delivered to said Lott O. Reynolds, residing at said city of Pittsburgh, in the State of Pennsylvania, to wit, at the district aforesaid, a certain blank bill of exchange in a set of two parts, being the printed form of a bill of exchange, with their acceptance written across the face of each part by them under their said firm name of J. S. & R. E. Neal, but said bill of exchange was left in blank as to date, amount, time and place of payment,

the name of the drawers and drawees thereof; the name of said Reynolds as payee was written in body of each part by the style and description of L. O. Reynolds, and it was expressed in the body of each part that the same was payable on condition that the other part was not paid; which said blank acceptance was so delivered by said defendants to said Reynolds, at his special instance and request, without any valuable consideration whatever, for the sole purpose of enabling said Reynolds to obtain money thereon for his own use and accommodation upon the credit of said defendants; and the same was, and was intended to be, their accommodation acceptance only.

And the said defendants then and there authorized said Reynolds to fill up said blank in said bill with a reasonable date, and in a reasonable sum, payable at a reasonable time and place, at his own discretion, and having perfected the same as a bill of exchange, to procure the same to be sold and negotiated for his own accommodation, and to apply the proceeds to his own use.

And the defendants say that afterwards, to wit, on said 30th day of July, 1857, at said city of Pittsburgh, to wit, at the district aforesaid, said Reynolds filled up the first part of said bill of exchange as of that date, and with the sum of twenty-four hundred and fifty dollars, making it payable four months after date, at the Ohio Life Insurance and Trust Company's bank, at Cincinnati, in the State of Ohio, to wit, at the district aforesaid, and addressed the same to said defendants, and caused said L. O. Reynolds & Son to sign the same as drawers, and said L. O. Reynolds endorsed the same, and procured one Henry McCullough also to endorse the same, as accommodation endorser, for him, said Reynolds; and then and there sold and negotiated the same for a valuable consideration to said Merchants and Manufacturers' Bank at said city of Pittsburgh, and received therefor from said bank the full amount thereof in money, less the usual discount and exchange, and then and there delivered the said part of said bill to said bank.

And said defendants say that said Henry McCullough, who has lifted said bill since its maturity, and is the holder thereof, did, before the commencement of this suit, to wit, on the day of , institute suit thereon against these defendants as acceptors, in said Jefferson circuit court, which suit is still pending and undetermined.

Said defendants say that at the time of filling up and negotiating said first part of said blank bill of exchange as aforesaid, said Reynolds did not in corresponding manner fill up the said second part thereof, nor did he deliver over said second part to said bank along with said first part, nor did he destroy the same, but they say that he retained it without the knowledge or consent of said defendants in his own possession, in the same blank form and condition in

which the same had been delivered to him by the defendants, as aforesaid.

And said defendants say that after the filling up and negotiation of said first part of said bill of exchange as aforesaid, to wit, on said 1st day of August, in the year 1857, at said city of Pittsburgh, to wit, at the district aforesaid, said Lott O. Reynolds, without any authority whatever from the defendants, and without their knowledge or consent, fraudulently filled up said second part of said bill of exchange as of the date last aforesaid, and with said sum of thirteen hundred and fifty dollars, payable four months after date, at said Ohio Life Insurance and Trust Company's bank, at Cincinnati, and addressed the same to the defendants, and caused said L. O. Reynolds & Son to sign the same as drawers, and endorsed the same by the name and description of L. O. Reynolds, and procured said L. Wilmarth & Co. also to endorse the same, as accommodation endorsers, for him, and then and there, in his own name, and for his own use and benefit, fraudulently delivered the same to the plaintiff as a bill of exchange, which is the same supposed bill of exchange in said count of the declaration mentioned, and not other or different.

Wherefore said defendants say that they did not accept the said supposed bill of exchange; and they further say that they never received any portion or the proceeds thereof, and never derived any benefit whatever from said supposed bill of exchange.

And the defendants further aver, that although the said supposed bill of exchange, at the time when the same was so assigned and delivered to, and received by, said plaintiff as aforesaid, purported on its face to be a "second of exchange," and to be payable on the condition that the "first of exchange" remained unpaid, yet the said plaintiff carelessly and negligently, and contrary to the commercial usage in such case, accepted and received the same as aforesaid, without making any inquiry whatever after or concerning the corresponding "first of exchange" therein mentioned, when, upon making such reasonable inquiry, said plaintiff might well have learned, and would have learned, the facts aforesaid, and this they are ready to verify; wherefore, &c.

4th. And for a further plea as to the said first count of the declaration, said defendants say actio non, because they say that heretofore, to wit, on the 10th day of July, in the year 1857, at the district aforesaid, the said defendants, residing at Madison, in said State of Indiana, wishing to obtain a loan of money upon a bill of exchange, and believing that such loan might be more readily procured and upon better terms at said city of Pittsburgh, in the State of Pennsylvania, made and delivered to said Lott O. Reynolds, residing at said city of Pittsburgh, a blank bill of exchange in a set of two parts, being the printed form of a bill of exchange in a set of two parts, with their acceptance written across the face of each

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part by them, under their said firm name of J. S. & R. E. Neal; but said bill of exchange was left and remained in blank as to date, amount, time and place of payment, and as to the names of drawer and drawees thereof. The name of said Reynolds as payee was written in the body of each by the style and description of L. O. Reynolds; and it was expressed in the body of each part that the same was payable on condition that the other part was not paid.

And said defendants then and there requested said Reynolds to cause said blank bill to be perfected as a bill of exchange, by the signatures of the requisite parties as accommodation drawers and endorsers, and to fill up the same with a sum from fifteen hundred to three thousand dollars, and to supply the proper date, and time and place of payment. And having thus perfected the said blank acceptance as a bill of exchange to sell and negotiate the same for money, and remit the proceds to said defendants, all of which said Reynolds then and there promised and agreed with said defendants to do.

And said defendants say, that afterwards, to wit, on the day and year last aforesaid, at said city of Pittsburgh, to wit, at the district aforesaid, he, said Reynolds, filled up the first part of said blank acceptance with said last named date, and with the sum of two thousand and thirty-five dollars, and addressed the same to said dedendants, making it payable four months after date, and caused said L. O. Reynolds & Son to sign it as drawers, and then and there sold, negotiated, and transferred it for value to said Merchants and Manufactures' Bank of Pittsburgh, and received therefor from said bank the full amount thereof in money, less the usual discount and exchange, and paid over the proceeds thereof to said defendants.

And said defendants say, that after the maturity of said bill of exchange, to wit, on the 2d day of January, 1858, said last named bank, being still the holder and owner of said bill of exchange, instituted a suit thereon in the Jefferson circuit court of said State of Indiana against these defendants as acceptors thereof, and such proceedings were had thereon that afterwards, at the March term, 1858, of said Jefferson circuit court, to wit, on the 23d day of March, 1858, said bank recovered a judgment in said court against these defendants as such acceptors for the sum of two thousand and eighty-two dollars and forty-nine cents, being the full amount of said bill of exchange, with the interest that had accrued thereon, together with the costs of suit; which judgment remains in full force and unreversed.

And the said defendants further say, that at the time of filling up and negotiating said first part of said blank acceptance as aforesaid said Reynolds did not in corresponding manner fill up said second part thereof, nor did he deliver it over to said bank along

with said first, nor did he destroy it; but they say that he retained it without their knowledge or consent in his own possession, in the same blank form and condition in which they had delivered it to him as aforesaid.

And said defendants say, that afterwards, to wit, on the 18th day of August, in the year 1857, at said city of Pittsburgh, to wit, at the district aforesaid, said Lott O. Reynolds, without any authority whatever from said defendants, and without their knowledge or consent, fraudulently filled up said second part of said blank acceptance, as of that date, and with said sum of twenty-one hundred and sixty-eight dollars, payable four months after date at said Ohio Life Insurance and Trust Company's bank at Cincinnati, Ohio, and addressed the same to said defendants, and caused said L. O. Reynolds & Son to sign the same as drawers, and himself endorsed the same by the name and description of L. O. Reynolds, and procured said Wilmarth & Co. also to endorse the same as accommodation endorsers for him, said Reynolds, and then and there fraudulently transferred and delivered the same to the said plaintiff as a bill of exchange; all of which he, said Reynolds, then and there did in his own name and for his own use and benefit; which is the same supposed bill of exchange in said count of the declaration mentioned, and not other or different.

Wherefore said defendants say that they did not accept the said supposed bill of exchange in said count mentioned; and they further say that they never received any portion of the proceeds thereof, nor derived any benefit whatever therefrom.

And the said defendants further aver, that although the said supposed bill of exchange in said count mentioned, at the time when the same was so assigned and transferred to and received by said plaintiff as aforesaid, purported on its face to be a "second of exchange," and to be payable on the condition that the "first of exchange" remained unpaid; yet the said plaintiff carelessly and negligently, and contrary to the commercial usage in such case, accepted and received the same as aforesaid without making any inquiry whatever after or concerning the corresponding first of exchange therein mentioned, when upon making such reasonable inquiry said plaintiff might well have learned, and would have learned all the facts aforesaid, and this the defendants are ready to verify; wherefore they pray judgment, &c.

Per SULLIVAN, DUNN, & HENDRICKS,
Att'ys for Def'ts.

5th. And for a further plea herein as to said third count of the declaration, said defendants say actio non, because they say that at the time said blank acceptance in two parts (first and second) was delivered by them to said Reynolds, as in said count mentioned, each part thereof was upon its face expressed to be payable, on con-

dition that the other part was not paid. And they further say that after the first part thereof which was perfected as a bill of exchange, and sold, negotiated and assigned by said Reynolds to said Merchants and Manufacturers' Bank, as in said count mentioned, became due and payable, to wit, on the 2d day of January, in the year 1858, said Merchants and Manufacturers' Bank instituted a suit thereon against these defendants as acceptors thereof, in the Jefferson circuit court of the State of Indiana, and such proceedings were had thereon that afterwards, at the March term, 1858, of said court, to wit, on the 23d day of March, 1858, said bank recovered judgment against them as such acceptors, for the sum of two thousand and eighty-two dollars and forty-nine cents, being the full amount of said bill of exchange, with the interest that had accrued thereon, together with costs of suit, which judgment remains in full force and unreversed, and this the defendants are ready to verify; wherefore said defendants pray judgment, &c.

6th. And for a further plea herein as to said third count of the declaration, said defendants say actio non, because they say that in filling up and perfecting said second part of said blank acceptance in the form of a bill of exchange, and in procuring the signature of the requisite parties thereto, and in selling, transferring and negotiating the same to said plaintiff as in said count mentioned, said Lott O. Reynolds acted without any authority whatever from the defendants, and without their knowledge or consent. That he was not their agent in that behalf, and that he did not act or profess to act as their agent in that behalf, but, on the contrary thereof, said defendants say that said Reynolds acted in that behalf in his own name, and on his own account, and for the sole purpose of obtaining money for his own use and benefit, and that he did in fact apply the proceeds of said second part so negotiated to the plaintiff, to his own use, and this they are ready to verify; wherefore defendants pray judgment, &c.

7th. And for a further plea in this behalf as to said fourth count of the declaration, said defendants say actio non, because they say, that at the time they delivered said blank acceptance in two parts (first and second,) each part thereof purported on its face to be payable on condition that the other part was not paid; and they further say, that the same was not delivered to said Reynolds as their agent, but, on the contrary thereof, said defendants aver the truth to be, that the same was delivered by them to said Reynolds for his own use and on his own account, as their accommodation acceptance, and in no other manner and for no other purpose whatever, and this the defendants are ready to verify; wherefore they pray judgment, &c.

8th. And for a further plea herein, as to said fourth count of the declaration, said defendants say actio non, because they say that in

filling up said second part of said blank acceptance and in procuring the signature of said other parties thereto, and thereby perfecting the same in the form of a distinct bill of exchange, and in negotiating, selling, and transferring the same to said plaintiff, as in said count stated, said Reynolds acted without the knowledge, authority or consent of defendants; that he was not their agent in that behalf, and that he did not act, or profess to act, or hold himself out as acting as their agent in that behalf, but, on the contrary thereof, defendants say that said Reynolds acted in that behalf in his own name and on his own account, and for the sole purpose of obtaining money for his own use and benefit, and that he did in fact apply the proceeds of said second part so negotiated to the plaintiff to his own use, and this they are ready to verify; wherefore they pray judgment, &c.

Per SULLIVAN, DUNN & HENDRICKS,
Att'ys for Def'ts.

And the said plaintiff also files her demurrer to the 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas of said defendants, in these words:

1. And the said plaintiff, by her said attorneys, as to the said plea of the said defendants by them secondly above pleaded, saith that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude her, the said plaintiff, from having or maintaining her aforesaid action thereof against the said defendants, and that she, the said plaintiff, is not bound by law to answer the same, and this she, the said plaintiff, is ready to verify; wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and her damages by reason of the not performing of the said several premises and undertakings in the said first and second counts of her said declaration mentioned, to be adjudged her, &c.

C. E. WALKER,
For Plaintiff.

And defendants come and say, that their said 2d plea is sufficient to bar plaintiff's action, and this they are ready to verify; wherefore, &c.

HENDRICKS & SULLIVAN.

2d. And the said plaintiff, by her said attorney, as to the said plea of the said defendants by them thirdly above pleaded, saith that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude her, the said plaintiff, from having or maintaining her aforesaid action thereof agsinst the said defendant, and that she, the said plaintiff, is not bound by law to answer the same, and this she, the said plaintiff, is ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this

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behalf, the said plaintiff prays judgment and her damages by reason of the not performing of the said several promises and undertakings in the said first and second counts of her said declaration mentioned, to be adjudged to her, &c.

C. E. WALKER,
For Pl'ff.

And defendants say, their 3d plea is sufficient to bar said plaintiff as aforesaid, and this they are ready to verify.

HENDRICKS & SULLIVAN, *P. D.*

3d. And the said plaintiff, by her said attorney, as to the said plea of the said defendants by them fourthly above pleaded, saith, that the same, and the matters contained therein, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude her, the said plaintiff, from having or maintaining her aforesaid action thereof against the said defendants, and that she, the said plaintiff, is not bound by law to answer the same, and this she, the said plaintiff, is ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and her damages, by reason of the not performing of the said several promises and undertakings in the said first and second counts of her said declaration mentioned, to be adjudged to her, &c.

C. E. WALKER,
For Pl'ff.

And said defendants come and say, that their said fourth plea is sufficient to bar said plaintiff, and this they are ready to verify; wherefore, &c.

HENDRICKS & SULLIVAN, *P. D.*

4th. And the said plaintiff, by her said attorney, as to the said plea of the said defendants by them fifthly above pleaded, saith, that the same, and the matters and things therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude her from having or maintaining her aforesaid action thereof against the said defendants; and that the said plaintiff is not bound by law to answer the same, and this the said plaintiff is ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and her damages, by reason of the non-performing the said several promises and undertakings in the said third count of her said declaration mentioned, to be adjudged to her, &c.

C. E. WALKER,
For Pl'ff.

And said defendants say, that their said 5th plea is sufficient to bar said plaintiff, and this they are ready to verify; wherefore, &c.

HENDRICKS & SULLIVAN, *P. D.*

5th. And the said plaintiff, by her said attorney, as to the said plea of the said defendants by them sixthly above pleaded, saith, that the same, and the matters and things therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude her, the said plaintiff, from having or maintaining her aforesaid action thereof against the said defendants, and that she, the said plaintiff, is not bound by law to answer the same; and this she, the said plaintiff, is ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and her damages, by reason of the not performing of the said several promises and undertakings in the said third count of her said declaration mentioned, to be adjudged to her, &c.

C. E. WALKER, *for Pl'ff.*

And defendants say, that their said 6th plea is sufficient to bar said action, and this they are ready to verify; wherefore, &c.

HENDRICKS & SULLIVAN, *P. D.*

6th. And the said plaintiff, by her said attorney, as to the said seventh plea of the said defendants by them seventhly above pleaded, saith, that the same, and the matters and things as therein stated and set forth, are not sufficient in law; wherefore judgment, &c.

C. E. WALKER,
For Plaintiff.

And said defendants say, that their said 7th plea is sufficient to bar said plaintiff, and this they are ready to verify.

Wherefore, &c.

HENDRICKS & SULLIVAN, *P. D.*

7th. And the said plaintiff, by her said attorney, as to the said plea by the said defendants eighthly above pleaded, saith that the same, and the matters and things stated and set forth, as therein stated, are not sufficient in law.

Wherefore judgment, &c.

C. E. WALKER, *for Pl'ff.*

And defendants say, that their said 8th plea is sufficient to bar said plaintiff's action, and this they are ready to verify.

Wherefore, &c.

HENDRICKS & SULLIVAN.

And further days given the parties.

And afterwards, to wit, on the twenty-fifth day of June, 1858,

that being the thirty-first judicial day of the aforesaid May term of said court, present the same judge as last aforesaid, come the parties by their attorneys, and the court now being sufficiently advised as to the demurrers filed herein, do overrule the demurrers to the said second, third and fourth pleas; and as to the demurrers to said fifth, sixth, seventh, and eighth pleas, it is considered by the court that said third and fourth counts of the declaration to which said pleas relate are each insufficient in law, and it is considered by the court that said demurrers be overruled as to said 5th, 6th, 7th, and 8th pleas, and that the same be sustained as to said third and fourth counts of the declaration, and the parties abiding said demurrers.

It is therefore considered by the court, that the plaintiff take nothing by her suit, and that the said defendants recover of the said plaintiff their costs and charges in this behalf laid out and expended, taxed at dollars.

And the plaintiff now prays the court to grant her a writ of error to the United States Supreme Court, and notifies the defendants' counsel in open court that she will remove this case by writ of error to said Supreme Court, which writ is granted on filing bond to be approved by the court, the defendants' attorneys waiving further notice.

Supreme Court of the United States.

THE BANK OF PITTSBURGH
vs.
JOHN S. NEAL and REUBEN E. NEAL.

Know all men by these presents that we, the Bank of Pittsburgh, John Graham, and Charles E. Walker are held and firmly bound unto the above named John S. Neal and Reuben E. Neal in the sum of five hundred dollars, to be paid to the said John S. Neal and Reuben E. Neal, their executors or administrators; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals this 13th day of July, A. D. 1858.

Whereas the said Bank of Pittsburgh hath prosecuted a writ of error to the Supreme Court of the United States, to reverse a judgment rendered in the above entitled cause or suit, of the Bank of Pittsburgh against John S. Neal and Reuben E. Neal, by the United States circuit court for the circuit and district of Indiana: Now, therefore, the condition of this obligation is such, that if the above named Bank of Pittsburgh shall prosecute her said writ of error to effect, and answer all costs if she shall fail to make good

her plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN GRAHAM, *Pres.* [SEAL.]
JOHN GRAHAM. [SEAL.]
C. E. WALKER. [SEAL.]

Sealed and delivered in presence of—
MORRISON UNDERWOOD,
As't JOHN GRAHAM.

{ Seal of the Bank of Pittsburgh. }

Witness the seal of the Bank of Pittsburgh and signature of the President.

CASHIER.

During the trial of the foregoing case the parties filed the following agreement, to wit:

It is agreed by the parties that all the depositions taken by both parties to the suit in the cause heretofore pending in the Jefferson circuit court, and now on file in said court, (Jefferson circuit court,) may be used on the trial of the cause in said U. S. cir. court the same as if they had been taken for this cause.

Said depositions are the following, to wit: those of Lott O. Reynolds and Charles C. Reynolds taken by defendants, and those of L. C. Wilmarth and L. Wilmarth taken by plaintiff, or copies thereof. Each party reserves the right to object to such portions of any of the depositions as they may think improper testimony.

The defendants will admit on the trial the incorporation of the plaintiff—that all her stockholders are non-residents of Indiana.

The plaintiff will admit that on the 2d day of January, 1858, the Merchants and Manufacturers' (Bank) commenced suit against defendants on the $2,035 bill described in the depositions, and at March term, 1858, of the Jefferson circuit court, Indiana, recovered judgment on it ag'st defendants as acceptors for $2,082 49, to wit, on 23d March, 1858. Also, that on the 14th day of December, 1857, John Black & Co. commenced suit ag'st defendants in said Jefferson circuit court on the $2,750 bill described in the depositions; and at March term, 1858, on 23d March, 1858, recovered judgment ag'st them as acceptors for the full amount of the bill, with interest, viz: $2,805 70.

Also, that before the commencement of this suit, to wit, on the day of , Henry McCullough, the holder of the $2,450 bill of exchange described in the depositions, commenced a suit against the defendants as acceptors of the bill in said Jefferson circuit court, which suit is still pending.

The defendants also admit the acceptance on the face of the two bills in suit are in their own handwriting, and that the endorsements on the backs thereof by L. O. Reynolds are in said Reynolds'

handwriting; and that the endorsements on the backs thereof and Wilmarth & Co. are in the handwriting of a member of the firm of L. Wilmarth & Co.

C. E. WALKER, *for Pl'ff.*
SULLIVAN, DUNN & HENDRICKS,
For Def'ts.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the circuit and district of Indiana, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court, before you, between the Bank of Pittsburgh and John S. Neal and Reuben E. Neal, a manifest error hath happened, to the great damage of the said Bank of Pittsburgh, as by her complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 24th day of July, in the year of our Lord eighteen hundred and fifty-eight, and of the independence of the United States the eighty-third, and the seal of the said circuit court hereto annexed, at Indianapolis, in said district of Indiana.

[SEAL.]

HORACE BASSETT, *Clerk.*

A true copy of the within writ filed in this office for the defendants.

HORACE BASSETT,
Clerk of the United States Circuit Court.

Citation.

The United States of America to John S. Neal and Reuben E. Neal, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington,